

TAXATION:

County Collectors have no right to charge counties for indexing tax books.

COUNTY COLLECTORS:



March 12, 1934

F i l e d 20

Mr. Elliott M. Dampf,  
Prosecuting Attorney,  
Jefferson City, Missouri.

Dear Mr. Dampf:

We are acknowledging receipt of your letter in which you inquire as follows:

"On November 14, 1933, an opinion was written by your office answering the question of the indexing of tax books, which was written by Frank W. Hayes, Assistant, and approved by you.

It appears that in many of the counties of the state, indexing has been done by the Assessor or the collector. It also appears that a great many of our county courts desire this work to be done and that there is no statute making it the duty of the Collector or Assessor to index same.

In view of this situation we believe that the court would have the right to employ a party to perform this work, but before proceeding on same, may we kindly request your opinion in the matter?"

On November 14, 1933, this Department issued an opinion to Mr. William Settle, County Collector, Richmond, Missouri, to the effect that assessors and collectors could not collect additional compensation for indexing the tax books unless they could point out some statutory authority upon which to base the collection of the fee. There is no statute that authorizes the payment of such fee. At the time the foregoing opinion was written we considered the case of Boggs v. Caldwell County, 28 Mo. 586, now cited by Mr. Lauf, and concluded that that case would not be authority for the particular fee sought to be collected. In that case the Court, at page 588, says as follows:

"There can be no reasonable doubt, we think, that the county courts have the power to order an index to be made to

the books of recorded deeds, and to allow a reasonable compensation for the work out of the county funds. Although it is the duty of the recorders to keep up their indexes without any compensation from the county, and their compensation is provided by law to come from the persons having their deeds recorded, yet in the course of time it may happen that these books become unfit for use and have to be renewed. The county court is specially entrusted with the duty of seeing to the preservation of any property belonging to the county, and they necessarily have the right of appropriating a sufficient sum from the county treasurer to secure the proper execution of these duties."

In the foregoing case the county court ordered the indexes to the deed records to be renewed, or in other words, ordered the books rehabilitated, and the Court found that the county court had the right, under its general authority, to preserve the property belonging to the county. The situation in that case was similar to the county court appropriating money to repair the court house or other property of the county under its control and custody. The situation in that case, however, as we view it, is radically different from the situation presented by your inquiry. As we are informed, to index the tax books means that the collector places under the taxpayer's name on the personal tax book the various line numbers at which there appears real property in the real estate tax book assessed against the same individual. As an example, under the name of John Smith on a personal tax book would appear the numbers 500, 600 and 700 indicating that at those lines in the real estate tax book there appears certain pieces of real estate owned by John Smith and assessed in his name.

It is evident that the practice of indexing the tax books, which is followed in some counties, is a matter purely for the personal convenience of the collector in the collection of taxes. It is not a duty imposed upon him by statute, but is a method of keeping the records in his office and doing something more in the keeping of his records than is required by statute. No doubt, many collectors have adopted innovations for their own convenience in the collection of taxes and if collectors in these cases could charge for these additional methods which they adopt, then there is no logical reason why any other collector should not be paid for any unique practice which may appeal to him in the running of his office. While the salaries or fees of the collectors are fixed by law, yet if such collectors could increase their compensation by receiving pay for the adoption of these various new methods which they use for their own convenience, then the amount of compensation which

they might receive from the county would only be limited by the ingenuity for inventing some new method in the administration of their office.

The law is well settled in this State that public officers must be able to point out the statute authorizing them to collect fees from the public treasury. The rule is announced in State ex rel. v. Brown, 146 Mo. 401, 406, whereit is said:

"The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services."

Again in State ex rel. v. Adams, 172, Mo. 1, the Court says at page 7:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed."

The policy of law is that the salaries and fees of public officials are definitely determined by law. When a person becomes a public officer he knows what compensation he is entitled to, and the county knows the extent of its liability to him. To hold that the collectors can increase their compensation by the adoption of a particular method of bookkeeping or a certain system in the keeping of their records would practically destroy the well-established principle, as set out in the foregoing cases. Such practice would enable all county officers, who have sympathetic county courts, to increase their compensation in an unlimited manner by doing things not required by the statute and which would be purely for the convenience of the officer elected to discharge the duties of the office. The limit of any officer's compensation on such a theory would be limited only by his ability to invent some new method or practice and the extent to which he could get the county court to cooperate with him in the payment of fees.

While we do not deny that the county court has the authority to expend county funds for the protection and preservation of county property, yet indexing the tax books

March 12, 1934

is not done for the purpose of preserving or protecting county property. The words, indexing the tax books, unless we are misinformed, has nothing to do with rehabilitating any books or records in the collector's office, as was the situation in the Boggs case above, but by indexing the tax books the collector simply adopts a method of keeping his records which, although it may impose some additional labor upon him, yet is done solely for the purpose of making more convenient for him the collection of the taxes, which is the duty of his office imposed upon him. We do not believe that the Boggs case above is authority for paying him for such services. In finding no statute which authorizes the payment of fees for this purpose and being of the opinion that the Boggs case should not be construed to authorize the collection of such additional compensation, we conclude that county collectors are not entitled to additional compensation for the adoption of some practice such as indexing the tax books, which is purely for their own convenience.

It is therefore the opinion of this Department that county collectors may not **charge** additional compensation for indexing the tax books, as the term is commonly understood.

Very truly yours,

FRANK W. HAYES  
Assistant Attorney General

APPROVED:

\_\_\_\_\_  
Attorney General

FWH:S