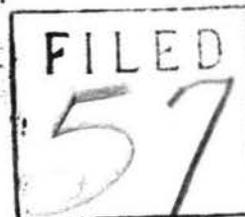


COUNTY COURTS: Cannot pay check charge on checks given in payment of taxes.

June 4, 1938



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Mr. Marr:

We received your letter of May 5th, which read as follows:

"The Collector of Revenues has presented to the County Court a bill covering the year 1937 for amounts paid on out of the county and out of the state checks, known as a check charge of about 4¢ per check, which is an exchange charge for cashing foreign checks by the bank cashing the check. This amounts to about \$50.00 per year. Is this one of the incidental expenses of the office of Collector of Revenue, for which the county court should pay?"

If a taxpayer pays his taxes by check to the collector, he violates the terms of Section 9911 R. S. Mo. 1929. This Section provides, in part, as follows:

"Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes."

June 4, 1938

Since the statute provides that taxes "shall be paid in gold or silver coin or legal tender notes of the United States, or in national Bank notes" it follows, of course, that the collector can legally receive the amount of taxes due only in such a manner. If the collector had followed the law in this respect, this check charge would not have been incurred. Consequently, your inquiry can be stated in this manner; is the county liable and can it pay for certain charges which came into existence through the failure of the collector to collect taxes in the form and manner specifically prescribed by statute? We do not think that any such charges can legally be paid by the county court.

The effect of Section 9911, therefore, is that such an expense was never to be contemplated and that the counties should never be called upon to pay such an item. This is an expense that should never exist. It could not, therefore, ever be considered as an expense of the county in any sense, in connection with its authorized business.

We are not attempting to pass on the question as to where the liability for such a check should fall, under the circumstances. We are only saying that the county court cannot be held liable for, nor can it legally pay any such charges brought into existence through the violation of the express terms of the statute.

#### CONCLUSION

A county court is not authorized to pay a check charge paid by the county collector in cashing checks in payment of taxes. Such a check constitutes an illegal demand against the county which the county court is unauthorized to pay, because Section 9911 R. S. Mo. 1929 provides specifically that all taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes.

Respectfully submitted

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General