

COLLECTORS:
SALARIES AND FEES:
COLLECTING DRAINAGE
DISTRICT TAXES:

Commissions allowed collectors
for collecting drainage district taxes.

January 13, 1940

Mr. George O. Dalton
Collector of Marion County
Hannibal, Missouri



Dear Sir:

This is in reply to yours of recent date where-
in you submit the following questions:

"In reference to drainage districts organized under Circuit Courts, will you please advise to whom the penalty is paid under Section 10762 R. S. of Missouri, 1929? Will you please advise me if I am allowed one per cent (1%) commission on current drainage taxes collected and two per cent (2%) commission on delinquent drainage taxes collected?"

"I also wish to state here that I am in a County where there is a branch office, and I am allowed 3/4 of one per cent (1%) on all taxes collected, and would like to know if this Section 9901 R. S. of Missouri, 1929, applies to drainage taxes collected by me in this County."

On the question of to whom does the penalty from delinquent drainage taxes belong, we find that Section 10762, R. S. Missouri 1929, provides as follows:

"All taxes provided for in this article remaining unpaid after December 31st of the year for which said taxes were levied shall become delinquent and bear a penalty of one per cent. per

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month on the amount of said taxes from date of delinquency until paid. In computing said penalty each fractional part of a month shall be counted as a full month."

It will be noted that this section provides for the penalty but does not indicate to whom the penalty shall be paid. Section 9914, R. S. Missouri 1929, provides in part as follows:

"If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector, after the first day of January then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, of one per cent. per month upon all taxes collected by him after the first day of January, as aforesaid; and in computing said additional tax or penalty, a fractional part of a month shall be counted as a whole month. Collectors shall, on the day of their annual settlement with the county court, file with said court a statement, under oath, of the amount so received, and from whom received, and settle with the court therefor: * * "

This section refers to general taxes only. However, it does indicate that the lawmakers did not intend that the collector would be authorized to retain, as a part of his compensation, the one per cent per month penalty.

In the case of State ex rel. White v. Fendorf, Collector of Revenue, 296 S. W. 787, it appears from that case that the collector did not construe the general tax law so that he would be entitled to retain the one per cent penalty provided for in Section 9914, supra.

In *King v. Riverland Levee District*, 218 Mo. App. 490 at 493, the rule on the authority of an officer to receive compensation is stated as follows:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. (State ex rel. Evans v. Gordon, 245 Mo. 12, l. c. 27, 149 S. W. 468; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504.) Furthermore our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. l. c. 565, to the effect that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same."

The collector, in collecting delinquent drainage district taxes, is paid extra compensation by virtue of the provisions of Section 10880, R. S. Missouri 1929, which provides as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent. of all such taxes collected, and for the col-

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lection of delinquent taxes for such they shall receive two per cent. of all sums collected."

It will be noted that this section allows the collector one per cent additional for collecting delinquent drainage district taxes. Since Section 10762, supra, does not provide for the collector to retain the one per cent per month penalty, and since said Section 10880 pays him one per cent extra for collecting taxes, then it would seem that his full compensation for collecting drainage taxes would be provided for by said Section 10880.

CONCLUSION.

From the foregoing it is the opinion of this department that the collector of revenue would not be authorized to retain the one per cent per month penalty for delinquent drainage taxes collected by him.

We are also of the opinion that the compensation of the collector for collecting drainage district taxes is fixed by said Section 10880, which allows him one per cent commission on current drainage district taxes and two per cent on delinquent drainage taxes.

II.

On your second question on the question of whether or not you are allowed three-fourths of one per cent of drainage taxes collected, we find that Section 9899, R. S. Missouri 1929, provides as follows:

"In all counties in this state that may now or hereafter have a population of 25,000 and less than 40,000, and in which there is a city of over 15,000 population, more than ten miles distant from the county seat, and in which said city there is a courthouse owned by the county, and in which said courthouse there is held regular and legally established

terms of a court of common pleas, it shall be the duty of the collector of the revenues of such county to maintain in addition to his office at the county seat a branch office in the courthouse located in the said city of 15,000 population or more, for the convenience of the taxpayers of said county living within the jurisdiction of said court of common pleas."

Section 9900, R. S. Missouri 1929, which is also pertinent to this question, provides as follows:

"It shall be the duty of the collectors of the revenue of such counties to keep the tax books of such townships as may be under the jurisdiction of said court of common pleas in said branch office, and to keep one or more deputies in said office to attend (to) the duties thereof."

Section 9901, R. S. Missouri 1929, provides as follows:

"In all such counties where the collector of the revenue is required by this chapter to maintain a branch office as provided herein, he shall be allowed to retain, in addition to the amount now authorized by law, three-fourths of one per centum of all taxes collected to cover the additional expense of maintaining such branch office."

The collector in the counties described in said Section 9899 would be required to maintain a branch office and keep deputies in such branch office for the purpose of collecting any and all taxes including drainage

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district taxes. These statutes are plain and unambiguous and since said Section 9901 is all inclusive as to taxes collected it would seem that it would include the drainage district taxes.

CONCLUSION.

It is, therefore, the opinion of this department that in counties where a branch office is maintained as is provided for by Section 9899, the collector of revenue would be authorized to retain three-fourths of one per cent of all taxes collected including drainage taxes.

Respectfully submitted

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APPROVED:

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