

COUNTY COLLECTOR: Back taxes are not to be included in the limitation of fees under Section 11106 R. S. Mo. 1939.

February 19, 1941

Mr. A. A. Willard
Collector Revenue
Dallas County
Buffalo, Missouri



Dear Sir:

This department is in receipt of your letter of February 12th, wherein you make the following inquiry:

"Will you please give your opinion on Section 9935 Revised Statutes of Missouri 1937, which sets out counties in different brackets according to the charges of tax books for the current year as to collector's pay for his services in collecting revenue, except back taxes.

Then in the latter part of the section is stated, provided that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current tax but shall not apply to fees and commissions on the collection of back and delinquent taxes.

If collection of back taxes are to be included in the limitation, what law so provides?"

We assume the section to which you refer is Section 11106 R. S. Mo. 1939, Laws of 1937, page 547. The last proviso is as follows:

"Provided, that the limitation on the

amount to be retained as herein provided shall apply to fees and commissions on current taxes, but shall not apply to commissions on the collection of back and delinquent taxes and ditch and levee taxes, and the compensation of the county collector for the collection of levee taxes and ditch taxes, collected for drainage purposes, shall be one per cent of the amount collected."

We refer you to the first paragraph of said section which contains a provision with respect to back taxes:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:"

The section in question which you present was under consideration in the case of State vs. Davis 335 Mo. 159, l.c. 162:

"It will be noted that in the first paragraph of the section it is provided that 'the collector shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more.' In State ex rel. v. Hawkins, 169 Mo. 615, 70 S. W. 119, it was contended that, by this paragraph, 'back taxes' were excluded from the provisions of Section 9935. We ruled to the contrary and held

that, under said section, a collector was entitled to compensation for collecting delinquent taxes, to be deducted from the taxes collected, and further compensation under Section 9969, Revised Statutes 1929, for collecting said taxes, to be taxed against the delinquent taxpayer as penalty and costs.

In this situation plaintiff contends that the word 'levied' as used in the clause 'the total amount of all such taxes and licenses levied for any one year' should be held to mean 'charged.' If so held, the delinquent taxes charged to the collector in 1932 would be added to the taxes levied for that year, and the compensation of the collector fixed by subdivision XIII of Section 9935 instead of subdivision XI of said section.

(2) The word 'levy' as applied to taxes has a well-defined and understood meaning. It means the formal order, by the proper authority, declaring property at its assessed valuation, subject to taxation at a fixed rate. (State ex rel. Hamilton v. Hannibal & St. J. Ry. Co., 113 Mo. 297, l.c. 307, 21 S. W. 14.) The clause under consideration is not ambiguous, and the Legislature must have used the word 'levied' advisedly. In this connection it should be noted that before taxes become delinquent they must have been current. It follows that the delinquent taxes charged to defendant in 1932 were counted in fixing the compensation of the collector when they were current. Plaintiff seeks to again have said taxes counted in fixing said compensation. It may be, as contended by plaintiff, that inequalities of compensation

occur as between collectors only charged with current taxes and collectors charged with both current and delinquent taxes. If so, this court is without authority to amend the statute by substituting the words 'charged and remaining uncollected at the beginning of any year,' for the words 'levied for any one year.' If inequalities of compensation occur, it is a matter for the consideration of the Legislature. Furthermore, the language used being unambiguous, executive construction of these provisions of the statute is not for consideration.

Plaintiff cites *States ex rel. Scotland County v. Ewing*, 116 Mo. 129, 22 S. W. 476; *State v. Ascotin County (Wash.)*, 140 Pac. 914. Those cases do not authorize a court amendment of the statute. The judgment should be affirmed."

The effect of the holding in the above case is that delinquent taxes are not to be included in determining the rate of compensation of the collector and we accordingly so hold.

Respectfully submitted

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Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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