

COUNTY COLLECTOR: County Collector should not deposit his
COMMISSIONS: commissions on taxes with taxes in the
County Treasury.

February 5, 1943

Mr. James A. Finch, Jr.
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Cape Girardeau, Missouri

2-10

FILED 29

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department as follows:

"Under Section 11056, R. S. 1939, the county court is authorized in counties having a population of less than seventy-five thousand to require the county collector to make daily deposits of collections, in a depository selected by the county court, to be credited to the county collector's fund. Cape Girardeau County has less than seventy-five thousand inhabitants, and the county court has selected a depository in which the collector is required to deposit daily collections to the county collector's fund.

"In the latter portion of said Section 11056 it is provided:

"The collector shall not check on such "County Collector's Fund" except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositories."

"When the collector deposits all the collections in the county collector's fund he deposits his commissions, and the statute does not specifically authorize the collector to draw a check to withdraw his commissions or against his commissions for the payment of deputy hire, clerical help or for any other office expense. Would be pleased to have your opinion at your earliest convenience as to your construction of this section and to have you advise how the county collector may check against this fund in order to pay his commissions or to check against his commissions due for the purpose of paying office help, deputy hire, etc."

I believe you have overlooked the provisions of Section 11098, R. S. Mo. 1939, when considering your question. You will note that by this section you are required to file with the County Clerk a statement of the various taxes which you collect and to pay these taxes into the County Treasury. You will note that this section provides that you do not pay your commissions into the County Treasury.

In construing the provisions of this section relating to the Collector's duties, the court, in *Hethcock v. Crawford Co.*, 200 Mo. 170, 175, said:

"* * * Thus, if we look to other provisions of the statutes it will appear that plaintiff's duty was to report his tax collections and to retain his five per cent commissions--the language of the statute being (sec. 9255) that the collector 'shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all ... county ... road and municipal taxes ... by him collected during the preceding month, and shall, on or be-

fore the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively ...'

"In addition to the precise provisions of the last-quoted section, there are cognate sections providing for settlements; and the manifest theory of the statutes is that the collector report his commissions in his settlements, and that it is his privilege and duty to keep back the commissions allowed by the law on tax collections and not the county court's duty to see that he does. The county court does not prepare his settlements, nor does it furnish the data therefor. The county court does not allow his commissions; it has no lot or part in that; the law allows them on settlements and statements made by him--the court being merely the representative or fiscal agent of the county, charged with the duty to see to it that the public is protected. * * * * *

This statute is plain and unambiguous and the court in the Hethcock case, supra, has given it a construction which supports our conclusion.

CONCLUSION

From the foregoing it is the opinion of this department that the Tax Collector should not deposit his commissions with the County Treasurer and that there is no provision other than the provisions of Section 11056, supra, to withdraw tax monies from the county treasury.

Respectfully submitted,

TWB:CP

APPROVED:

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