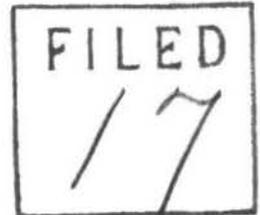


COUNTY COLLECTORS: Regarding the purchase of tax receipt books
by county collector.

August 1, 1945



Honorable Jonathan E. Clarke
Prosecuting Attorney
Lincoln County
Elsberry, Missouri

Dear Mr. Clarke:

On July 11, 1945, you wrote a letter to this office
requesting an opinion, which letter reads as follows:

"The Collector of Revenue of this County
has been asked by a local Drainage Dis-
trict to pay out of his statutory fee for
collecting drainage taxes the cost of
printing Receipt Books which are completed
by him and delivered to the tax payer.

"The Collector feels that his statutory
fee for collecting Drainage Taxes is not
sufficient to justify the purchase of
these Tax Receipt Books, particularly in
view of the fact that in the past the
drainage districts themselves have pur-
chased these Receipts. The Collector
would like a ruling on this matter, and
any information you have in the premises
will be greatly appreciated."

We direct your attention to the following sections of
the Revised Statutes of Missouri, 1939.

Section 12370 reads, in part, as follows:

"To maintain and preserve the ditches,
drains, levees or other improvements made

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pursuant to this article and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of supervisors may, upon the completion of said improvements and on or before the first day of September in each year thereafter, levy a tax upon each tract or parcel of land upon corporate property within the district to be known as a maintenance tax.' * * * Said collector shall demand and collect the maintenance tax and make return thereof and shall receive the same compensation therefor and be liable for the same penalties for failure or neglect so to do as is provided herein for the annual installment tax: * * * "

Section 12342 reads, in part, as follows:

"It shall be the duty of the collector of revenue of each county in which lands or other property of any drainage district organized under this article are situate to receive the 'drainage tax book' each year, and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands and other properties. Where any tract or part thereof has been divided and sold or transferred, the collector shall receive taxes on any part of any tract, piece or parcel of land or other property, charged with such taxes and give his receipt accordingly. * * * "

Section 11084 reads, in part, as follows:

"Whenever any person shall pay taxes charged on the tax book, the collector

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shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon.
* * * "

Section 11106 reads, in part, 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."

It will be noticed that there is no provision in any of the above statutes which expressly allows the county collector to receive any compensation or fees for the expenses of collecting drainage district taxes. Section 11106 allows a certain fee for collection of drainage district taxes, but does not authorize any additional amounts for the payment of necessary expenses of the collector or authorize the collector to charge any additional fees for such collection. Section 12370, providing for a maintenance tax, states that the tax may be levied, in part, "for the purpose of defraying the current expenses of the district." No cases have been found which determine whether tax receipt books of the county collector would be considered current expenses of the district. However, the question of expenses has been considered by the Missouri Supreme Court in several instances.

In *Ewing v. Vernon County*, (1909) 216 Mo. 681, the question arose as to whether a county recorder was entitled to reimbursement for stamps which were used by him in his official business. The court held that he was entitled to reimburse-

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ment for this item. There were no express fees allowed for the business which he transacted which necessitated the use of the stamps in question. The court said:

"Conceding there are no fees allowed for the delivery of a deed after recording or for transmitting a deed from one county to another, yet the statute does not contemplate that he should pay money out of his pocket in the performance of his official duty."

The court, in answer to the contention that the salary of a public officer cannot be increased and that he cannot receive additional compensation for his duties, said:

"Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo."

The court further said:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

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Rinehart v. Howell County, (1941) 348 Mo. 421, was an action against the county for reimbursement for sums paid for necessary stenographic work incurred by the prosecuting attorney of the county in the discharge of his official duties. That case cited with approval the Ewing case, supra, and again stated:

"The case is to be distinguished from cases announcing the rule that officials may not receive compensation in addition to that authorized by law." (Cases cited.)

The court further said:

"The instant case was submitted on the theory, as disclosed by the stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in Ewing v. Vernon County, 216 Mo. 681, 695, 116 S. W. 518, 522(b). That case quoted with approval (383) a passage from 23 Am. and Eng. Ency. Law (2 Ed.) 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories and held a recorder entitled to reimbursement for outlays for necessary janitor service and stamps, stating: 'Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore, those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo.'"

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We think it is apparent from these cases that a public officer is entitled to reimbursement for expenses which are necessary in the performance of his official duties, and that this type of expense is not within the rule against the receipt of additional compensation by a public officer so as to deny him the right to reimbursement. There can be no doubt that the securing of tax receipt books is necessary to the collector in collecting the drainage district taxes here in question, since he is required by Section 11084, quoted above, to give each taxpayer a receipt upon the collection of the tax. It is thus mandatory on the collector that he give such a receipt.

As stated above, Section 12370 authorizes taxation, in part, for the purpose of defraying current expenses of the district. While this does not specify that tax receipt books shall be paid for by the district, we think, in view of the above cases and the fact that the giving of a receipt is a mandatory duty of the collector, that the expense of the receipt books would be considered current expenses of the district.

It is interesting to note that in Section 11106, which provides for the fees to be allowed county collectors for the collection of taxes, it is provided, under subsection 14, relating to the fees of the collector in counties where such taxes exceed two million dollars a year, the collector must pay all salaries and other expenses of his office. The provision that the collector shall do this is significantly absent from the provisions relating to fees of collectors in any other counties. Since it has been the custom for counties to pay such expenses of county officials, we think it indicates that they considered it proper to do this except where the statute provided otherwise.

It has been necessary, because of the lack of any authority on the subject which directly involves drainage district fees, to look to the cases involving the collection of other taxes and the expenses of county officials in regard thereto. We think, however, that the rules pertaining to these situations are applicable to the instant question, since the only difference between the two is that in one case the drainage district is involved and would be liable for the costs, and in the other case the county would be liable.

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CONCLUSION

It is, therefore, the opinion of this department that the County Collector of Lincoln County would not be required to pay out of his statutory fee for collecting drainage taxes the cost of printing receipt books which are completed by him and delivered to the taxpayer.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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