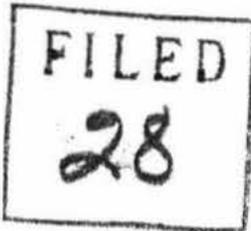


COUNTY COLLECTORS) Current drainage taxes included in
) determining compensation for mailing
) notice of taxes due.



2-14-52

February 4, 1952

Honorable Bert Femmer
Collector of Revenue
New Madrid County
New Madrid, Missouri

Dear Sir:

We have received your request for an opinion on the question of whether or not county collectors in third and fourth class counties in Missouri are entitled, under the provisions of Section 52.250, RSMo 1949, to receive one-half of one per cent of drainage taxes collected by them as compensation for mailing out statements and receipts to taxpayers, as required by Section 52.230, RSMo 1949.

The provisions in question are as follows:

Section 52.230. "Beginning with the calendar year 1949, and each year thereafter, collectors of revenue in all third and fourth class counties of the state, not under township organization, shall mail to all resident taxpayers, at least fifteen days prior to delinquent date thereof, a statement of all real and tangible personal property taxes due and which are assessed on the current tax books in the name of such taxpayers. Collectors shall also mail tax receipts for all such taxes received by mail."

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Section 52.240. "The said statement and receipt shall be mailed to the address of the taxpayer as shown by the county assessor on the current tax books, and postage for the mailing of said statements and receipts shall be furnished by the county court; provided, however, that the failure of the taxpayer to receive the notice provided for in this act shall in no case relieve the taxpayer of any tax liability imposed on him by law."

Section 52.250. "The collectors in third class counties shall receive one-half of one per cent and the collectors in fourth class counties shall receive one per cent of all current taxes collected, including current delinquent taxes, exclusive of all current railroad and utility taxes collected, as compensation for mailing said statements and receipts. Said compensation shall be exclusive of and unaccountable in the maximum commissions now provided in sections 52.260 to 52.280."

On April 25, 1950, this office rendered an opinion to Honorable W. H. Holmes, State Auditor, in which we concluded that, in determining the compensation of the county collector under Section 52.250, RSMo 1949, current drainage taxes should be included.

You have submitted to us an opinion by the attorneys for the Little River Drainage District which reaches a contrary conclusion. The attorneys for the Little River Drainage District take the position that the collectors

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are not entitled to retain any part of drainage taxes under the above section. They base their opinion on cases in Missouri, including Houck v. Little River Drainage District, 248 Mo. 373, Meier v. City of St. Louis, 180 Mo. 408, Farrar v. City of St. Louis, 80 Mo. 379, and Egyptian Levee Company v. Hardin, 27 Mo. 495, which hold that the taxes which drainage districts are authorized to levy and collect are not within the Missouri constitutional limitations pertaining to taxation. The courts in those cases concluded that the levies are in the nature of special assessments and, therefore, the constitutional provisions did not apply.

We were, of course, aware of the holding of these cases at the time of the preparation of our opinion to the State Auditor. However, we felt then and still feel that these cases are not decisive of the present question.

In construing a statute the primary question is to determine the intention of the Legislature.

Here the Legislature has required the county collectors to send to the taxpayers in their counties statements of all real and tangible personal property taxes due and which are assessed on the current tax books in the name of such taxpayers. The collector is required to mail to the taxpayers receipts for taxes paid by them. The Legislature has provided that, as compensation for these services, the collector shall receive "one-half of one per cent of all current taxes collected, including current delinquent taxes, exclusive of all current railroad and utility taxes collected."

The question is whether or not the Legislature, in using the word "taxes," intended to include drainage taxes. The attorneys for the Little River Drainage District state that the Legislature did not, stating that such levies are not taxes. However, when we turn to statutory provisions dealing with the levy and collection of the so-called drainage assessments, we find that the

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Legislature has consistently referred to them as taxes.

Section 242.450, RSMo 1949, provides that the board of supervisors shall "levy a tax" on the property in the district to which benefits have been assessed. The secretary of the board of supervisors is required to prepare a list "of all taxes levied." This list is entitled "Drainage Tax Record of Drainage District"

Under Section 242.460, RSMo 1949, the "Drainage Tax Book, Drainage District County, Missouri, for the Year 19 ..." is required to be prepared and certified to the county collector each year.

Section 242.540, RSMo 1949, makes it the duty of the county collector of revenue to receive the "drainage tax books" each year and to collect the tax therein set out. "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 property."

Section 242.550, RSMo 1949, provides in part:

" * * * The said collector shall retain for his services one per cent of the amount he collects on current taxes and two per cent of the amount he collects on delinquent taxes."

(Emphasis ours)

Section 242.560, RSMo 1949, provides the method of collecting delinquent taxes.

Section 242.600, RSMo 1949, provides the procedure for the enforcement of drainage taxes by suit.

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In view of the Legislature's consistent use of the words "tax" and "taxes" in Chapter 242, RSMo 1949, we feel that the Legislature in Section 52.250, RSMo 1949, intended to include such taxes in determining the collector's compensation.

As pointed out above, the collector of revenue is required to collect drainage taxes. No official of the drainage district has any authority to receive such taxes. *Dalton v. Fabius River Drainage District*, 238 Mo. App. 655, 184 S. W. (2d) 776. It seems clear to us that the Legislature, in enacting Section 52.230, RSMo 1949, intended that the collector should render a statement to the taxpayers covering all taxes which the taxpayers were liable to pay, including drainage taxes. In providing for the compensation for the collector's services, the Legislature employed the term "all current taxes collected" and limited this term by excluding "all current railroad and utility taxes."

In view of the consistent legislative reference to the drainage assessments as taxes, we feel that the maxim of construction, expressio unius est exclusio alterius, is applicable and that the Legislature intended to exclude, in determining the collector's compensation, only the railroad and utility taxes and no others received by him. If the Legislature had intended to exclude the drainage taxes received by the collector, we feel that it would have so provided.

CONCLUSION

Therefore, it is the opinion of this department that current drainage taxes are to be included in

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determining the collector's compensation under the provisions of Section 52.250, RSMo 1949.

Respectfully submitted,

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