

TAXATION: (1) A county collector in a county of the third
COUNTY COLLECTOR: class is to be compensated for performing services
SCHOOLS: in connection with a supplemental tax book on the
same basis that he is compensated for services per-
formed in connection with the regular tax book. (2) Where a corrected
tax rate for a particular school district is certified after the average
rate, the average rate should be re-determined and the railroads and
public utilities' taxes should be re-computed based upon the corrected
average rate. (3) The school district or county superintendent of
schools would not be liable for the additional expenses incurred by
the county collector for making corrections based upon a supplemental
tax book made necessary by the failure of the proper officials to
certify in the first instance the correct tax rate for a particular
school district.

November 11, 1959

Honorable Richard E. Snider
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Mr. Snider:

Reference is made to your request for an official opinion of
this office, which request reads as follows:

"The R-4 School District of Cape Girardeau
County voted a bond issue this summer which
increased their taxes Seventy Cents, (\$.70).
However, the school board and the county
superintendent submitted the estimate for
that district to the county court on the basis
of the old tax rate of One Dollar and Twenty-
five Cents, (\$1.25), rather than the tax rate
increased by the bond levy, or One Dollar and
Ninety-Five Cents, (\$1.95). The county clerk's
office extended these taxes, figured the average
tax, determined the railroad and utilities, pre-
pared the statements, and turned the tax books
over to the county collector. Then when tax
payers of the R-4 district started paying their
taxes, it was discovered that the Seventy Cent,
(\$.70), bond levy was not included on their
statements. I requested help from your office
and was told by phone and through very helpful
opinions which had previously been written that
it would be necessary for us to prepare sup-
plemental tax books and send out supplemental
tax statements. It seems to me to be unquestio-
nable that the county clerk must be and can be
compensated for this additional work.

"However, I would like to know how the county
collector can be compensated for the extra expense

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which he is going to be put to. It is going to be necessary for him to mail out approximately one thousand six hundred statements, he must abstract, post in two books and in many instances will be required to collect the taxes from the same people twice.

"At one-half of one per cent based on the approximate Nine Thousand Dollars (\$9,000.00), which will be collected, the collector will lose approximately Three to Five Hundred Dollars.

"I would also like to know whether or not we are required to re-figure the average tax rate and re-determine the railroad and utilities tax. I am sure that the cost and trouble of doing this would be greater than the increase in the railroad and utilities tax.

"Is it possible that the R-4 school district or the county superintendent is responsible for this added expense? If so, is the county duty bound to enforce this responsibility?"

You inquire first as to how the county collector is to be compensated for the extra expense that must necessarily be incurred under the facts outlined. Concerning the supplemental tax book we invite your attention to Section 137.300, RSMo 1949, which section reads in part as follows:

" * * * In making said supplemental tax book, and in all subsequent proceedings thereon, the county court, clerk of the same and the collector shall be governed by the same law as is now or at the time then being or may be in force for the same duties, and shall receive the same compensation as is now or at the time then being or may be provided by law for similar duties; * * * "

We also invite your attention to Section 165.093, RSMo 1949, which provides that for collecting the school taxes the collector shall receive as full compensation for his services the same percentage as is allowed by law for collecting other taxes. Said section reads as follows:

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"It shall be the duty of the county clerk to take a receipt from the county collector for the school taxes by him placed on the general tax books; and the collector shall proceed to collect the same in like manner as the state and county taxes are or may be collected, and he shall receive, as full compensation for his services on the amount collected and paid over by him, the same per cent as is allowed by law to collectors for collecting other taxes; and he shall pay over monthly, to the county treasurer, all such taxes collected and take his receipt therefor."

We have not been able to find any other statutory provisions which would allow the collector any other or further compensation for performing his duties in connection with a supplemental tax book. We therefore conclude that the collector in counties of the third class is to be compensated for performing services in connection with a supplemental tax book on the same basis that he is compensated for duties performed in connection with the regular tax book. A like conclusion has been previously reached dealing with the compensation of the county clerk. See opinion of this office to Alden S. Lance, Prosecuting Attorney, Andrew County, dated October 27, 1955.

We understand from talking with your county collector that it is possible that the additional expenses will cause the collector's office to exceed the amount budgeted for the operation of the office for this year. We further understand that your county has on hand an unincumbered surplus which could be used to meet these additional expenses. In view of such fact we do not foresee any difficulty in this regard since it has been held by the Supreme Court of Missouri in the case of *State ex rel. vs. Cribb*, 273 SW2d 246, that a county can spend funds even though not budgeted for a particular purpose if such expenditure does not obligate the county in a sum in excess of the revenue provided for the year plus any unincumbered balances from previous years.

You next inquire whether or not it is necessary to re-compute the average tax rate and re-determine the railroad and utility taxes. The statutory provision for determining the average rate levied against railroads and public utilities is found in Section 151.150, RSMo 1949. We find nothing which would excuse the railroads and utilities from paying taxes upon their property using a rate determined

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by using the corrected rate in District R-4 merely because there was a failure to certify the correct rate prior to the time that the average rate was computed. In fact, it would seem that the bond-holders would be in a position, by proper legal proceedings, to compel the re-computation of the average rate. Further, it seems to us that the situation with which you are involved is no different than if the school district had increased their total rate by proper action after the average school rate had been determined. We therefore believe that the railroad and utility taxes should be re-determined using an average rate computed by including the corrected rate in R-4 School District.

Lastly, you inquire whether the additional expenses incurred by the collector's office as a result of the necessity for making corrections based upon a supplemental tax book could be imposed against the school district or county superintendent of schools under the facts outlined. We have searched the statutes and find no provision which would, under these facts, make the school district or county superintendent of schools liable for the additional expenses.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that:

- (1) A county collector in a county of the third class is to be compensated for performing services in connection with a supplemental tax book on the same basis that he is compensated for services performed in connection with the regular tax book.
- (2) That where a corrected tax rate for a particular school district is certified after the average rate, the average rate should be re-determined and the railroad and public utility taxes should be re-computed based upon the corrected average rate.
- (3) That the school district or county superintendent of schools would not be liable for the additional expenses incurred by the county collector for making corrections based upon a supplemental tax book made necessary by the failure of the proper officials to certify in the first instance the correct tax rate for a particular school district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donal D. Guffey.

Yours very truly,

JOHN M. DALTON
Attorney General

DDG/mlw
Enclosure