

COUNTY COLLECTOR: It is mandatory on the county collector to withhold fees to witnesses or grand jurors for delinquent taxes, even though the taxes are in a larger amount than the warrants.

May 10, 1939

Hon. John T. McKay, Jr.
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

In answer to your request of May 3rd, in reference to the payment of criminal costs and fees upon delinquent taxes, will say that I am enclosing an opinion rendered by this department on the 15th day of December, 1937, to Mr. Alfred Moeller, Prosecuting Attorney of Ste. Genevieve County. In that opinion this department held that a county collector cannot collect partial payment of state, county and school taxes. The facts in that request were very much different than in your request. Your request reads as follows:

"There has arisen in my county some difference of opinion as to the duties of the County Treasurer with reference to the disposition of criminal costs as provided by Sections 3854, 3855 and 3856 of the Revised Statutes of 1929.

"The County Treasurer now has on hand around \$800 criminal cost paid to him by the State of Missouri belonging to various witnesses, officers and jurors, each of whom at the time said costs were payable and demand was made, were indebted to the County in an amount greater than the amount of criminal costs due them.

"Section 3854 provides that in the event the indebtedness of a claimant of fees equals or

exceeds the amount of his fees, the treasurer shall give him credit for the amount of his fees. Most of these claimants are indebted to the County by reason of owing back personal taxes and the amount which they claim as criminal cost is insufficient to extinguish any one year's taxes.

"The Treasurer has not disbursed any of this money due to the fact that he does not believe as treasurer and ex-officio collector he has any authority to collect the delinquent personal taxes in installments, the claimants of these fees being unable to pay the balance of their taxes, and has asked me to get an opinion from you as to the procedure he should follow in disbursing these criminal costs."

Section 3853, R. S. Missouri, 1929, provides the method of certifying criminal costs. Section 3854, R. S. Missouri, 1929, provides for the payment of fees and the proceedings thereunder. This section partly reads as follows:

"* * * Provided further, that after deducting the amount of the indebtedness of the claimant, if any, on account of any or all of the various causes hereinbefore enumerated, the treasurer shall pay him the balance, giving duplicate receipts for the separate amounts paid, one of which shall be filed with the county clerk, who shall charge the treasurer with the same, but if the indebtedness

May 10, 1939

of the claimant equals or exceeds the amount of his fees, the treasurer shall give him credit for the amount of his fees, stating on what account, and shall make duplicate receipts for the same, one of which he shall deliver to the claimant and the other he shall file with the county clerk, who shall charge the treasurer with all such receipts, and in his regular settlements with the county court the treasurer shall make a full and complete exhibit of all his acts and doings under section 3853 to 3858, inclusive."

This section is mandatory and specifically states that even though he owes a larger amount than is due him on his fees, it is compulsory for the treasurer to give him credit for the amount of his fees. This seems to be an exception to the general rule, which we held in the opinion herein enclosed.

Section 3855 R. S. Missouri, 1929, defines what should be considered as criminal costs. Section 3856 R. S. Missouri, 1929, describes the disposition of fees by the county treasurer at the end of each term of court. Section 3857 R. S. Missouri, 1929, reads as follows:

"In order to make said sections 3853 to 3858 effective, it is hereby declared that all fees due by the state or county on account of any criminal case, or due witnesses before the grand jury, or as a juror or witness in an inquest, shall not be negotiable or assignable except subject to all the set-offs herein provided for, and that the state and county holds a prior lien on the same for the purpose of indemnification against loss by reason of the nonpayment of personal

back taxes, and for the payment of the fines, penalties, forfeitures and costs hereinbefore mentioned."

This section is one of the exceptions to the general rule that a county collector cannot collect part of the taxes and give receipts therefor.

Section 9911 R. S. Missouri, 1929, refers to the acceptance of warrants for the payment of taxes under certain conditions. Said section in full being as follows:

"Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue

for the year in which the warrant was issued over and above the expenses of the county or city for that year."

By this section the warrants must be presented by the legal holder and be issued and received in payment of a tax during the year for which the tax was levied. This section only applies where the holder of the warrant has been in possession of the same and which has not been withheld as provided under section 3857, supra.

Under section 12,171, R. S. Missouri, 1929, the county treasurer is prohibited from paying warrant unless presented by the person in whose favor it is drawn.

Section 12172, R. S. Missouri, 1929, authorizes the county treasurer to accept and pay a warrant from any one who has a proper assignment on the back thereof, as set out in that section.

Under section 3857, supra, the warrant is non-negotiable and non-assignable.

CONCLUSION.

In view of the above authorities it is the opinion of this department that the county treasurer may accept the warrants as set out under section 3857, supra, and it is his duty to retain the warrants and give credit upon the delinquent taxes of the amount due the witness or juror, as the case may be. He should retain the warrants even if the persons entitled to the warrants are indebted to the county for delinquent taxes in an amount greater than the amount of criminal costs due them. Under the facts as

Hon. John T. McKay, Jr.

-6-

May 10, 1939

stated in your request, it is the opinion of this department that this is one of the exceptions as set out under section 3857, supra, in which the county collector must retain and apply a partial payment of the taxes due the state, county and schools.

Respectfully submitted,

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APPROVED:

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