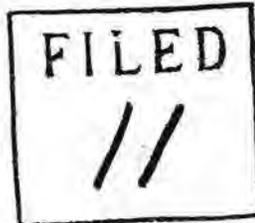


COUNTIES ADOPTING
TOWNSHIP ORGANIZATION:
COUNTY COLLECTOR OF REVENUE:
COUNTY TREASURER:
COUNTY ASSESSOR:

When a county adopts the township organization form of county government the county collector of revenue and the county assessor in office at the time when township organization becomes effective in said county, continue to hold their office until their respective

January 5, 1951

terms expire as provided for in Section 14020, R. S. Mo. 1939. The County treasurer under such a situation continues to serve as county treasurer.



1-12-51

Mr. C. Dudley Brandom
Prosecuting Attorney
Daviness County
Gallatin, Missouri

Dear Sir:

You have requested an official opinion by this department upon the following questions:

"Question 1 The Collector, elected in the current election to serve a term of four years under the present county organization plan of government: What is the Collector elect's status? Is he not without an office to fill and consequently a non-existent entity?

"Question 2 The Collector incumbent, serving at present as Collector under county organization type of government: What is his status? How long does he continue in office? What are his duties? What taxes does he continue to collect? To whom are said taxes paid? To whom does he deliver his books and records when his term of office expires?

"Question 3 The Treasurer elect, having been elected in the current election for a term of four years, supposedly to serve under county organization form of government: What is his status? Is he also elected to fill an office which no longer exists and consequently a non-existent entity?

"Question 4 The Treasurer incumbent, who was originally elected for a four-year term as Treasurer and Ex Officio Collector expiring April 1, 1949, who before the expiration of his said term became Treasurer as a holdover Treasurer since during his term township organization form of government ceased and county

Mr. C. Dudley . Brandom

organization form of government was adopted, he serving as holdover Treasurer until the last general election, that being the current election: What is his status, does he again become the Treasurer and Ex Officio Collector under the township organization form of government to serve until the next general election in November of 1952, and what are his duties and privileges as such?

"Question 5. Assuming from question 4 that the Treasurer and Ex Officio Collector holds over until the next general election:

"(a) On what date or at what time does he have the right and privilege to demand the books and records of the Ex Officio Collector?

"(b) When and at what time does he again assume the duties as Ex Officio Collector should be so elect?

"(c) Does he again collect corporation taxes and back taxes as the customary Ex Officio Collector does, and when does he commence such?

"Question 6. The assessor elected to serve for four years under the county organization form of government: Does he continue to serve until his elective term expires? If not, how long does he serve and what are his duties if his term is cut short?

"Question 7. Township Organization:

"(a) Does any property formerly belonging to the township and then being acquired by the county under county organization revert to the township when township form of government is again adopted?

"(b) When township form of government is adopted at an election such as here stated, who forms the governing body of each township? Under what authority? What authority and duties do they have?

Mr. C. Dudley Brandom

"(c) The taxes collected for the year 1949 on real estate: Do any of the townships receive any amount of the said tax money? If so, when? how? from whom? and to what extent? If not, when are they privileged to receive tax money and from what source?"

You have stated in your letter that the majority of the voters of your county voted at the November 1950 general election in favor of the township organization form of government.

Section 13931, R. S. Mo. 1939, Reenacted Laws 1945, page 1972, provides in part, as follows:

"If a majority of the electors voting upon the proposition shall vote for the adoption thereof the township organization form of county government shall be declared to have been adopted: Provided, that counties adopting township organization shall be subject to and governed by the provisions of the law relating to township organization on and after the last Tuesday in March next succeeding the election at which such township organization was adopted."

By virtue of the provisions of this section the adoption of the township organization form of county government will go into operation on and after the last Tuesday in March, 1951.

In answer to question number one we would like to call your attention to Section 14020, R. S. Mo. 1939. This section reads as follows:

"In any county in this state which may hereafter adopt township organization, the person holding the office of the collector of the revenue and the person holding the office of county assessor in such county, at the time in March when township organization becomes effective in such county, shall continue to hold his office and exercise all the functions and receive all the fees and emoluments thereof until the time at which his term of office would have expired had such county not adopted township organization, and, except as herein otherwise provided, he shall perform the same duties and be subject to the same requirements and liabilities as in counties not under township organization. Such county assessor shall assess the property of the various townships in

Mr. C. Dudley Brandom

such county and arrange his books and lists in the same manner as required by this statute of township assessors, so that it can be determined which township is entitled to the taxes assessed against any property. The county clerk of such county shall make out, for the use of such county collector, lists of the property assessed in each township the same as, by the provisions of this chapter, he is required to make out for the use of township collectors. The said collector of the revenue in such county shall pay over to the several township trustees of such county after deducting his commission, all township taxes and funds of every kind collected by him and belonging respectively to the several townships in said county, as required by Section 11014 of this chapter, in the case of township collectors, and for his failure to do so he shall be subject to the same liability as provided by said section in the case of township collectors. The first township collectors in such county shall be elected at the township election held in March next preceding the time at which the said term of office of the said collector of the revenue in such county shall expire and their terms of office shall begin at the expiration of the term of office of the said collector of the revenue, and they shall hold their offices until the next township election in said county. The township clerks in such county shall not be ex officio township assessors until after the expiration of the term of office of the said county assessor."

The Collector of Revenue who was elected at the general election in November, 1950, will take the office to which he was elected the first Monday in March, 1951, and will serve the term of four years as provided by the above statute.

In answer to question number two, we call your attention to Section 11073, R. S. Mo. 1939, which provides that the term of the collector will expire on the first Monday in March of the year in which he is required to make his last final settlement. This would be the first Monday in March, 1951. His term will end at that time. He will collect all taxes to be collected by a county collector of revenue until that time. He will then turn over his office and books to the collector who was elected

Mr. C. Dudley Brandom

at the November 1950 general election, as provided by law.

In answer to question number three we would like to call your attention to the following sections.

Section 13789, R. S. Mo. 1939, Reenacted Laws 1945, page 1392, Laws 1947, Vol. 1, page 429, (Section 54.01 R. S. Mo. 1949) reads as follows:

"There is hereby created in all the counties of this state the office of county treasurer."

Section 13789a, Added Laws 1947, Vol. 1, page 429 (Sec. 54.03 R.S. Mo. 1949) provides as follows:

"In counties of Classes 3 and 4 the qualified electors shall elect a county treasurer at the general election in the year 1950, except that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county treasurer at the November election in 1948. The county treasurer so elected shall be commissioned by the county court of his county, shall enter upon the discharge of the duties of his office on the first day of January following his election, and shall hold his office for a term of four years and until his successor is elected and qualified unless sooner removed from office. In counties which have adopted the township alternative form of county government the treasurer's term shall extend until the 1st day of April next after the election of his successor."

The treasurer elect will assume the duties of his office on the first day of January, 1951, and, shall hold this office for a term of four years. The office of county treasurer exists in all counties of this state regardless of the form of government under which the county operates. He will not perform the duties of ex officio collector of the county until the term of the collector of revenue expires, as we have set forth in answer to question number one.

In answer to question number four we cannot see how the present incumbent treasurer would again become the treasurer and ex officio collector of your county. His term will expire December 31, 1950 and he will not be in office on the last Tuesday in March, 1951, when the township organization form of county government goes into effect.

Mr. C. Dudley Brandom

Question number five need not be answered. In answer to question number six we again call your attention to Section 14020, supra. The assessor elected at the November 1948 general election shall serve until his term expires.

Our answer to your question 7a must be in the negative because we cannot find any statutory authority by which the county is divested of its title to such property. When the townships were dissolved by the previous election, they ceased to exist as political subdivisions of the state. The county acquired title to the property of said non-existent townships as well as the responsibility of paying their liabilities as previously decided in an opinion by this office dated January 17, 1947, that was sent to Mr. Bert E. Morgan, clerk of the county court of Daviess County.

Counties are political subdivisions of the state and hold their property in subordination to, and under the control of, the Legislature (See Barton County v. Walser, 47 Mo. 189)

Since the Legislature has failed to provide for divesting the county of its title to the property it has previously acquired from the existent townships, the property belongs to the county and can only be used or leased by the county as provided by law. 52 Am. Jur. page 498, says:

"* * *Where part of an existing township is detached and the part so detached is organized as a new township, no provision being made for the division or apportionment of the assets of the old township, it has been held that the new township may not recover of the old any part of the cash in the hands of the county treasurer and due the old township at the time of the division, or received by the treasurer for it after the division, from tax levies made prior to the divisions.
* * *"

A full answer to your question number 7b would require a lengthy discussion of the township organization form of county government. The governing body of the township is the board of directors, which is composed of the township trustee and two members of the township board. Their duties are set forth in Article IX of Chapter 101 of the Revised Statutes of Missouri, 1939. The Supreme Court of Missouri in Jensen v. Wilson Township, Gentry County, 145 S.W.(2d)372, 346 Mo. 1199, said:

Mr. C. Dudley Brandom

"Gentry County is organized under the provisions of the Township Organization Law. Chap. 86, R. S. 1929, Mo. St. Ann. Sec. 12251 et seq., p. 8119 et seq. This law provides that each township as a body corporate shall be governed by a board of directors. One of the duties of the board is to audit all accounts of township officers for services and all other accounts or demands against the township which are legally presented to it. Sec. 12299, R. S. 1929, Mo. St. Ann. Sec. 12299, p. 8137. The board must determine what claims are just and proper. But the authority of the board in the allowance of claims is further limited to those which have been verified. Section 12301, R.S. 1929, Mo. St. Ann. Sec 12301, at p. 8138, says: '* * *but in no case shall the township board be authorized to allow any claim, or any part thereof, until the claimant makes out a statement, verified by affidavit to the amount and nature of his claim, setting forth that the same is correct and unpaid, or, if any part thereof has been paid, setting forth how much.'"

"* * *A township board functions not as a court of broad jurisdiction but as the agent of the township with limited authority. Consequently, it is even more essential that its authority be exercised in strict compliance with the powers granted to it. Such a board comes under the same rule as a county court. * * *"

"In the case at bar the statutory requirement of verification is not a mere formality which may be overlooked. It is a matter of substance which is mandatory and must be followed. See National Supply Co. v. Izard County, Ark., 190 Ark. 744, 81 S.W. 2d 842. In approving the unverified claims on which these warrants were issued the board has acted not only without authority but also in direct violation of an express limitation on its power. Such action was a nullity and renders the warrants void. 20 C.J.S.; Counties, Sec. 249."

Mr. C. Dudley Brandon

The Supreme Court of Missouri in the case of Wright County v. Farmers & Merchants' Bank, 30 S.W.2d. 32, said:

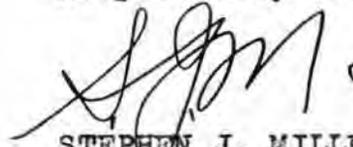
"* * *Moreover, an organized township, in a county under township organization, is a political subdivision of the state under section 12, art. VI of the Constitution. Drainage Dist. v. Trail Creek Tp., 317 Mo. 933, 941, 297 S.W. 1. This also gives us jurisdiction."

In answer to question 7c we would like to call your attention to Section 14019 and Section 14021, R. S. Mo. 1939. Your question relates to the taxes collected for the year 1949. We do not see how the townships could have any possible claim to taxes collected for the year 1949. If you meant to ask about taxes collected for the year 1950 then the answer would be that the townships have no claim to any 1950 taxes.

CONCLUSION

The answer to numerous questions concerning the status of the county collector of revenue, county treasurer and county assessor, of Daviess County when the majority of the voters of said county voted at the November 1950 General Election in favor of the township organization form of county government have been set forth in the body of this opinion. We will not try to summarize the answers as set forth above.

Respectfully submitted,



STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw