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PERSONS COLLECTING DELINQUENT PERSONAL PROPERTY TAXES SHOULD BE PAID FIXED SALARY FOR SERVICES, AND COUNTY TREASURER MAY NOT EMPLOY LAW FIRM FOR SUCH COLLECTIONS WHERE PART OF PAYMENT IS PERCENTAGE OF AMOUNT COLLECTED. § 5719.31, R.C.

SYLLABUS:

Persons employed pursuant to Section 5719.31, Revised Code, to collect delinquent personal property taxes, should be paid a fixed salary for their services; and the county treasurer may not, therefore, employ a law firm for such collections where part of the payment for services is to be a percentage of the amount collected.

Columbus, Ohio, December 11, 1961

Hon. Hubert D. Lappen, Prosecuting Attorney  
Hocking County, Logan, Ohio

Dear Sir:

In your request for my opinion you ask whether, pursuant to Section 5719.31, Revised Code, the county treasurer may retain a law firm to collect delinquent personal property taxes, it being agreed that for its services the law firm would be paid \$500.00 as a retainer plus contingent fee of 25 per cent of all collections in excess of \$2,000.

In Opinion No. 1815, Opinions of the Attorney General for 1928, page 600, the second paragraph of the syllabus reads:

“2. The county treasurer may legally contract with some person or persons to collect delinquent personal taxes on a percentage basis, provided the contract is approved by the county commissioners and a definite per cent compensation fixed.”

The pertinent statute at the time the 1928 opinion was written was Section 5696, General Code, which read:

“The county commissioners, at each September session, shall cause the list of persons delinquent in the payment on personal property to be publicly read. If they deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes or part thereof, prescribing the compensation of such collectors which shall be paid out of the county treasury. All such allowances shall be apportioned ratably by the county auditor

among all the funds entitled to share in the distribution of such taxes.”

In the case of *Commissioners v. Arnold*, 65 Ohio St., 479, at page 485, the Supreme Court held that the compensation of a collector must be fixed before the collection is made, and implied that if this were done, payment on a percentage basis would be valid. Opinion No. 1815, *supra*, followed this reasoning.

In 1931 (114 Ohio Laws, 825, at page 830), said Section 5696 was amended, the word “salary” being substituted for the word “compensation,” and the word “salaries” being substituted for the word “allowances.” Section 5719.31, Revised Code, the successor of Section 5696, General Code, and here pertinent, reads:

“If the board of county commissioners deems it necessary, it may authorize the county treasurer to employ collectors to collect the taxes mentioned in section 5719.05 of the Revised Code or part thereof, and fix the salary of such collectors, which shall be paid out of the county treasury. All such salaries shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes.”

Thus, while I am in accord with the conclusion reached by my predecessor in the 1928 opinion, on the then existing statute, the question now is whether the use of the word “salary” instead of the word “compensation” in the statute now involved should alter that conclusion.

In Webster’s New International Dictionary, Second Edition, page 545, the word “compensation” is defined as:

“2. That which constitutes, or is regarded as, an equivalent or recompense; \* \* \* remuneration; recompense \* \* \*.”

In the same volume, at page 2203, the word “salary” is defined as:

“1. The recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services, esp. to holders of official, executive, or clerical positions; fixed compensation regularly paid, as by the year, quarter, month, or week; stipend \* \* \*.”

Thus, while it is true that all “salary” is “compensation,” it appears that a salary is a particular type of compensation, that is, a fixed amount paid at regular intervals; and I note that this interpretation has been followed in past opinions of this office.

For example, in referring to the constitutional provision that the general assembly may fix the *compensation* of certain officers, but that no change therein shall affect the *salary* of any officer during his existing term, the first two paragraphs of the syllabus of Opinion No. 978, Opinions of the Attorney General for 1951, page 825, read as follows:

“1. The terms ‘compensation’ and ‘salary,’ as used in Article II, Section 20 of the Constitution of Ohio, are not synonymous. (Opinion No. 749, Opinions of the Attorney General for 1939, page 947, approved and followed.)

“2. Under the provisions of Article II, Section 20 of the Constitution of Ohio, the Legislature may change the per diem compensation of any officer whose total compensation is based upon such per diem payment and who receives no ‘salary’ in the sense of an annual or periodical payment for services dependent upon the time and not on the amount of service rendered. (Opinion No. 387, Opinions of the Attorney General for 1945, page 473, distinguished.)

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The reasoning of Opinion No. 978, *supra*, was followed in my Opinion No. 1115, issued on January 22, 1960.

Of further significance in the present question is the fact that in 1931 the legislature specifically substituted the words “salary” and “salaries” for the words “compensation” and “allowances.” In this regard, the intention in making such amendment must have been to effect some purpose. 37 Ohio Jurisprudence, Section 438, page 768. I believe it reasonable to conclude, therefore, that in making such amendment the legislature intended that persons employed to collect delinquent personal property taxes should be paid a fixed amount, paid at regular intervals.

Accordingly, it is my opinion and you are advised that persons employed pursuant to Section 5719.31, Revised Code, to collect delinquent personal property taxes, should be paid a fixed salary for their services; and the county treasurer may not, therefore, employ a law firm for such collections where part of the payment for services is to be a percentage of the amount collected.

Respectfully,

MARK McELROY

Attorney General