

Summarizing, in my opinion, the Alcoholic Beverage Commission is not limited for the fiscal year 1940-41 for enforcement purposes to the sum of \$81,733.31 arising out of the appropriation of Section 12 of Chapter 30, *supra*; but may use in addition thereto any necessary amount remaining in its Personal Service and All Other Operating Expense provided by the General Biennial Appropriations Act, limited—of course—by the fact that Personal Service and All Other Operating Expense are to be kept separate and distinct.

TREASURER'S FEES: For collecting delinquent personal property tax, payable out of funds for which taxes are collected.

January 6, 1941.

Mr. E. P. Brennan, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein the following question is asked:

“Does the County Auditor have authority to deduct from each fund for which taxes are levied amounts sufficient to reimburse the general fund of the county for the payment to the treasurer of the fees paid him on account of the 6 per cent fees?”

The 6 per cent fees referred to in your question as paid to the treasurer are authorized by the following statutory provision:

“The county treasurers of the state shall in addition to the salary herein provided receive as their property six per cent on all delinquent personal property taxes only collected at any time during each calendar year.”

Acts of 1933, Ch. 21, Sec. 6, as amended by Acts of 1937, Ch. 53, Sec. 1; Sec. 49-1006, Burns' Ind. St. Ann. Supp. 1940.

Your question requires a determination as to whether the six per cent fees authorized in the above quoted statutory provision constitute a charge against the delinquent taxes col-

lected, and upon which the fees are computed, or whether they constitute a charge against the general fund of the county out of which the treasurer's compensation as elsewhere provided in the statute is payable.

If the treasurer's six per cent fees are a charge against, and payable out of the delinquent taxes collected, each fund for which taxes are collected by the county treasurer would bear its proportionate share of this cost of collection of such delinquent taxes, unless on account of the nature of some funds to which taxes are distributed, the percentage could not be deducted from the taxes collected for such funds. If such fees are not payable out of the taxes collected, but only out of the general fund, the county, as distinguished from other political subdivisions, would bear this entire cost of collecting delinquent taxes.

Chapter 21 of the Acts of 1933 fixes the compensation of county officers for each county. Sec. 1 (Sec. 49-1001, Burns, etc.) provides that such officers "shall receive for their services the compensation provided in this act, which compensation shall be paid monthly from the general fund of the county in the manner now provided by statute for payment of official salaries, and they shall receive no other compensation, fees, per diem, per cent or other remuneration whatsoever *except as otherwise provided in this act.*" (My italics.) It further provides "the officers' salaries herein designated shall be paid by the respective counties, and shall be in full for their services as such officers, and also for all services required of them as ex-officio officers of any city which they serve as such, *except as herein otherwise provided.*" (My italics.) Section 4 (Sec. 49-1004, Burns, etc.) fixes the annual salaries of named county officials, including county treasurers, for each of the 92 counties. Sec. 5 (Sec. 49-1005, Burns, etc.) contains the following:

"The compensation provided in the foregoing section shall be in lieu of all salaries, fees and per diem now provided by statute for the officials therein designated * * * except as herein otherwise provided.

"All fees and remuneration of whatsoever kind or character, for official services or involving official authority now provided by statute or otherwise, shall be charged and collected by such officers and shall be the property of the county and shall be covered into

the general fund of the county except as herein otherwise provided.”

Section 1 of the 1933 Act makes it clear that at the time of its passage the only authority to compensate the public officers named was to be found in the Act itself; further, that their compensation should be paid monthly from the general fund of the county, and that they should receive no compensation, fees, per diem, per cent or other remuneration whatsoever not provided for in the Act. Sec. 5 (Sec. 49-1005, Burns, etc.) makes it apparent that the salaries as provided in Sec. 4 (Sec. 49-1004, Burns, etc.) were intended to constitute full payment to the officers designated for their official services, except where the Act made other provision, and that the charges and fees usually taxed and collected for services rendered, including those which theretofore accrued to the officer personally, should continue to be taxed and collected, and should become the property of the county, except where the Act provided otherwise. The Act provided otherwise in Sec. 6. It gave the treasurers remuneration in addition to that specified in Sec. 4, in that the treasurers should receive as their property “six per cent on all delinquent personal property taxes only collected.” This statutory language indicates a legislative intent that such percentage shall not constitute “property of the county” as do other fees and remuneration referred to in the preceding Sec. 5 (Sec. 49-1005, Burns). While there is nothing in Sections 5 and 6, *supra*, which would prevent the payment of the treasurer’s percentage, named in Sec. 6, into the general fund, and from that fund being repaid to the treasurer, the money which becomes the property of the treasurer is the six per cent of the delinquent personal property taxes collected by the treasurer. The General Assembly has thus provided that from the delinquent taxes on personal property collected by the treasurer, six per cent shall be the property of the treasurer and shall not belong to the various funds for which taxes are collected. This does not contravene Article VIII of the Indiana Constitution as was attempted in the situation before the Court in *State ex rel. Hord, Attorney General v. Board of Commissioners of St. Joseph County* (1883), 90 Indiana 359. There a charge was made for handling principal and interest belonging to the common school fund, and deducted from such common school fund. Also a collection charge was made and deducted from State taxes collected for school purposes.

The Court pointed out that Sections 3, 6 and 7 of Article VIII protect the common school fund, the interest thereon and trust funds held by the State against the levy of fees for their collection and management, whereas statutes then existing prohibited the charging of collection fees against taxes collected for the tuition fund. Since the statutes here involved do not affect the funds safeguarded by Article VIII there is no constitutional inhibition upon deduction of the six per cent fees for the treasurer from all delinquent personal property taxes collected, regardless of the fund for which taxes are collected, and said fees may be so deducted.

Your question is answered in the affirmative.

ANNUAL REPORTS: Required under 1935 Act of non-profit corporations organized under 1844 Act.

CORPORATIONS: Non-profit, required to file annual report under 1935 Act with Secretary of State.

SECRETARY OF STATE: To receive annual reports of non-profit corporations organized prior to 1935 Act.

January 6, 1941.

Mr. Fred E. Shick,
Deputy Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry as to whether or not a non-profit corporation organized under an Act of the General Assembly of 1844 should file annual reports pursuant to Section 29 of the Indiana General Not for Profit Corporation Act, enacted in 1935 (Acts of 1935, ch. 157, p. 557; Sec. 25-535, Burns' Ind. St. Ann. Supp. 1940), which section contains the following:

“An annual report accompanied by a filing fee of one dollar shall be filed with the secretary of state by all non profit corporations, domestic or foreign, whether incorporated under this or any other act except that if such corporation be incorporated under an act of this state, which provides that it shall file annual reports with the secretary of state, this section shall not apply