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THE BOARD OF COUNTY COMMISSIONERS MAY AUTHORIZE THE EMPLOYMENT OF COLLECTORS AND MAY FIX THE SALARY OF SUCH COLLECTORS—§§5719.31, 1.24 R.C., 5696. G.C.

SYLLABUS:

Where pursuant to Section 5719.31, Revised Code, a board of county commissioners authorizes the county treasurer to employ collectors to collect the taxes mentioned in Section 5719.05, Revised Code, the salaries of such collectors should be fixed by the board.

Columbus, Ohio, January 22, 1962

Hon. Robert Webb, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of County Commissioners of Ashtabula County and the County Treasurer have asked this office for an interpretation of R.C. Section 5719.31, as to whether the County Commissioners fix the salaries of such collectors, or whether the County Treasurer fixes the salary of said collectors, to be approved by the County Commissioners.

“I have inquired of other jurisdictions, and it seems that the policy on this is not uniform.

“I would appreciate a speedy answer on this, as it is necessary that appointments to this position be made immediately.”

Section 5719.31, Revised Code, reads as follows:

“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.”

The answer to your question depends on whether the words “fix the salary of such collectors” refer back to the words “it may” or to the

words "it may authorize the county treasurer to." While I concede that the interpretation of this language is open to some argument, I am of the opinion that the pertinent words should be read to mean that the board of county commissioners may authorize the employment of collectors and may fix the salary of such collectors; and I believe that a review of the history of the section will strengthen my conclusion in this regard.

Present Section 5719.31, Revised Code, was formerly Section 5696, General Code. The section number was changed, and language revised, in the code revision bill of 1953 (House Bill No. 1 of the 100th General Assembly). Said Section 5696, before revision, said:

"If the county commissioners deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes or part thereof, fixing 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."

I believe there is little doubt that under the language of Section 5696, General Code, the board of county commissioners had full authority to fix the salary of collectors. Further, under Section 1.24, Revised Code, a part of House Bill No. 1, *supra*, said Section 5696 may now be read as a restatement of the present law. Said Section 1.24 reads as follows:

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments."

Also, in the case of *Board of County Commissioners of Hamilton County v. Arnold*, 65 Ohio St., 479, (1902), the fourth paragraph of the syllabus reads:

"4. Under said section 2858, *the county commissioners must definitely prescribe the compensation of such collectors*, before collections are made; and that duty is not performed by prescribing that the compensation shall not exceed a certain amount, or a certain per centum." (Emphasis added)

The then pertinent law, Section 2858, Revised Statutes, read:

“The county commissioners shall, at their September session annually, cause the list of persons delinquent in the payment on personal property to be publicly read; and they may at any time, if they deem the same necessary, authorize the treasurer to employ collectors to collect the same or any part thereof, prescribing the compensation of such collectors which shall be paid out of the county treasury; and 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 view of the foregoing, therefore, it is my opinion and you are advised that where pursuant to Section 5719.31, Revised Code, a board of county commissioners authorizes the county treasurer to employ collectors to collect the taxes mentioned in Section 5719.05, Revised Code, the salaries of such collectors should be fixed by the board.

Respectfully,
MARK MCELROY
Attorney General