



September 26, 1933.

Prosecuting Attorney, Livingston Co.

Township Clerks Fees:-

Township Clerk is entitled to the fees set out in Section 12310 R.S. Mo. 1929 as amended Laws 1931, page 377 in addition to the \$2.50 per day salary for services performed.

Mr. Herbert M. Braden  
Prosecuting Attorney  
Chillicothe, Missouri.

*Sec 12310 Laws 31*

Dear Mr. Braden:-

We acknowledge receipt of your letter of August 8, 1933, as follows:

"I am writing you for an opinion as to whether or not a township clerk in counties under township organization, under section 12310 Missouri Revised Statutes for 1929 as amended, laws 31, page 377, is entitled to fees as set out in said section in addition to the \$2.50 per day salary for services performed as such clerk, in preparing and issuing warrants ordered by the Board."

The courts of Missouri have never passed on this question, hence this opinion is merely an interpretation of the above mentioned section by this office. We are of the opinion that the above mentioned section provides that a township clerk is entitled to the fees mentioned therein in addition to the daily salary of \$2.50 also mentioned therein. In the first place the "township clerk, as clerk" is specifically mentioned in the first lines of the section, among other township officers, as being entitled to the daily salary. This compensation is to be paid him for the regular and routine administration of his duties as clerk. The proviso clause following can only mean that the fees provided therein for the township clerk are to be in addition to the daily salary.

The words "and not per diem" contained in the first part of the proviso clause are there for the purpose of taking the fees provided therein out of any possible per diem classification. The reason for this is that double per diems are in general not favored by the courts. An annotation in 1 A.L.R. at

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page 294 discusses this matter adverting to the following cases:

Wilson vs. Bleloch, 109 N.Y. Supp. 340;  
Montgomery County vs. Bromley, 108 Ind. 158,

and others. It was the apparent intention of the Missouri legislature therefore to clarify, by the above words, any possible ambiguity of construction that might arise from the fact of two separate compensations being awarded to the township clerk.

Many states have statutes similar to our own and allow the township clerk fees for doing certain things and a per diem as well. Ross vs. Collins, 106 Ill. App. 396. In addition it has been held that a "per diem" is not a "fee". Seiler vs. State, 160 Ind. 605; State ex rel Tippecanoe County vs. Flynn, 161 Ind. 554; Comer vs. Morgan County, 32 Ind. App. 477. With this distinction in mind it is clear that the Missouri legislature intended to provide compensation for the township clerk in two ways. In the final analysis the legislature intended that the township clerk should receive the set salary of \$2.50 for his services, and that in addition he should receive certain fees for the doing of certain things enumerated in the proviso clause of the section. To construe the section in any other way would tend to make the wording thereof seem equivocal.

Very truly yours,

Charles M. Howell, Jr.,  
Assistant Attorney General.

Approved:

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Attorney General.