

Circuit Clerks.

Circuit Clerks are to be paid on a basis of fees collected by them and not on a basis of fees earned by them.

1-2
December 28, 1934.



Mr. Burl E. Underwood,
Circuit Clerk,
New Madrid, Missouri.

Dear Sir:-

We have your letter of November 20, 1934, in which is contained a request for an opinion as follows:

"I would like an opinion from your office in answer to the following question:

'At the expiration of the present term of the Circuit Clerk's office, will the next Circuit Clerk who goes solely on a fee basis for payment of his salary be paid by fees earned by him or on a basis of fees collected by him?'

Since there is a large amount of accrued costs and fees in pending cases on the books at the end of the present term it will be necessary to have a distinction between the two problems of fees earned and fees collected.

I shall appreciate very much your opinion regarding this matter."

Section 11786, Revised Statutes of Missouri, 1929, as reenacted Laws 1933, page 369, provides in part as follows:

"Sec. 11786. Fees of Circuit Clerk in Certain Counties.- The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. * * *"

The above section, in our opinion, refers to fees collected and not to fees earned. That the legislature so intended is apparent from its use of the words "shall be allowed to retain". If the legislature had intended to refer to fees

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earned, as the basis, we must presume it would have employed the phrase "shall be entitled to" or some such similar phrase. One can, of course, not retain that of which he has not possession, hence, in our situation a clerk could not retain fees which had not been actually collected,

We think the apparent legislative intent, as well as the general policy that Circuit Clerks are to be paid out of fees, is decisive of this question.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMH jr:MB

APPROVED:

Attorney-General