

APPELLATE COURTS:
CLERKS:

Must comply with provisions of
Section 1, Laws Mo. 1933, page 415.

August 30, 1938

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Honorable Forrest Smith
State Auditor
Jefferson City, Mo.

Dear Sir:

I wish to acknowledge receipt of your request for an opinion dated August 17, 1938, as follows:

"Section 1 of S.B. 124 found on page 415 of Mo. Laws 1933 provides:

'All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government, shall be deposited in the State Treasury.'

"This section is in conflict with Sections 11657 and 11658, R. S. Mo. 1929 with reference to clerks of Courts of Record. The Kansas City, Springfield and St. Louis Courts of Appeal do not deposit all their fees in the State Treasury as provided for in S.B. 124 of the 1933 Laws, but follow Sections 11657 and 11658; or, in other words, they retain the fees in their possession, pay salaries from these fees and each quarter file a report with my office showing the amount they have collected and the amount expended and at the end of the year, pay into the State Treasury the balance, if any, in that fund.

"I would like an opinion from your department as to whether the three courts named

above come under the provisions of S.B. 124 of the 1933 Laws or whether they follow the statutes as set out in Chapter 77 of the R. S. Mo. 1929."

Section 11657, R. S. Mo. 1929 provides that the clerk of the Court of each of the Court of Appeals should make a quarterly statement as to the amount of fees received and after deducting the amount paid for clerical assistance during the quarter, pay same to the State Treasurer, as follows:

"The clerk of each of the court of appeals shall keep a true and accurate account of all fees earned in his office, in a suitable book provided for that purpose, and at the end of each quarter of a year he shall make out a statement, verified by his affidavit, showing the amount of each fee received by him during the then past quarter of a year, from whom received and on what account; said statement shall include all fees for services of whatever character done in his official capacity, including all fees paid by the state for copying appellate court decisions, or for other work; and shall likewise include the name of each clerical assistant, if any; the length of time such assistants have been employed, and the amount paid to each; which statement, so verified, shall be filed with the state auditor. The auditor shall carefully examine the record of fees kept by said clerk or any person as to the correctness thereof, and after deducting from the aggregate of such statement the total amount, if any, paid by said clerk for additional clerical assistants, or other help, during said quarter, shall order the balance, if any, to be paid into the state treasury."

Section 11658, R. S. Mo. 1929 provides that said clerks must pay the amount within ten days after the

quarterly statement is filed, as follows:

"It shall be the duty of said clerk, within ten days after such quarterly statement is filed, to pay into the state treasury the amount so ordered, and take duplicate receipts therefor, one of which he shall immediately file with the auditor, who shall charge the treasurer therewith."

Section 1 of the Laws Mo. 1933, page 415, provides that all fees from whatsoever source received by any agency of the State Government by virtue of any law or rule or regulation made in accordance with any law shall, at stated intervals, be placed in the State Treasury, as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this

section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; provided that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

A reading of the latter statute discloses a clear conflict with the provisions of the two preceding sections. There is, however, a rule of statutory construction that conflicting provisions must be reconciled if possible. The rule is set out in the case of *State ex rel. St. Louis Public Service Co. vs. Public Service Commission*, 34 S. W. (2d) 486, l.c. 488, 326 Mo. 1169, as follows:

"We are therefore obliged to interpret the law as it reads and reconcile its inharmonious provisions if possible."

The statutes, as they appear in the 1929 provisions, indicate a duty on the part of the clerk to make quarterly payments of fees to the State Treasurer. The 1933 Act provides for payment of fees at "stated intervals" to the State Treasurer. There is no attempt to define a "stated interval", but considering all of the statutes together, we are of the opinion that same may be harmonized by requiring the continuation of quarterly payments by the clerk to the State Treasurer. An examination, however, of the other provisions in the above quoted statutes reveals an irreconcilable conflict.

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Sections 11657 and 11658, supra, require only the payment to the Treasurer of those fees remaining "after deducting from the aggregate of such statement the total amount, if any, paid by said clerk for additional clerical assistants or other help", whereas the 1933 Act requires that "all fees" be paid to the State Treasurer.

In the case of City of Westport ex rel. vs. Jackson, 69 Mo. App. 148, l.c. 153, the court said:

"It must be conceded that if there is an irreconcilable conflict between these provisions of the section, that the last would stand and the others, which can not stand with them, go to the ground."

The 1933 Act having been passed at a later date and being in irreconcilable conflict with Sections 11657 and 11658, R. S. Mo. 1929, with the exception of the intervals in which payment is to be made to the State Treasurer, the 1933 Act prevails.

We are, therefore, of the opinion that the clerks of the Kansas City, Springfield and St. Louis Courts of Appeals must comply with the provisions of Section 1, Laws Mo. 1933, page 415.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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