

PROSECUTING ATTORNEYS - Prosecuting Attorney not entitled to retain for his services, under Sec. 12942 R. S. Mo., '39, any compensation, but may receive his necessary travelling expenses.

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10-6
October 3, 1941

Hon. Guy H. Thompson
Prosecuting Attorney
Polk County
Bolivar, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of September 30, 1941, which reads as follows:

"Section 12942 R. S. Mo. 1939 provides for the duties of the Prosecuting Attorney in case of appeals and sets a maximum fee of \$25.00 as compensation in addition to the expenses in such cases. Where a county has been sued by a county officer to compel them to pay a surety bond and the case is taken to the Supreme Court on appeal would the prosecuting attorney in representing the county in such a case be entitled to the above mentioned fee or only to his necessary expenses."

Section 12939 R. S. Missouri, 1939, provides the amount of salary prosecuting attorneys of various counties shall receive in payment for their services and how the population of the various counties is ascertained for the purpose of fixing salaries.

Section 1340 R. S. Missouri, 1939, provides that certain fees shall be allowed to the prosecuting

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attorneys.

X Section 12941 R. S. Missouri, 1939, provides in part as follows:

"It shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, * * * * *

It will be noted from reading this Section that it is provided that every fee, and that moneys collected by him as fees, shall be turned over to the county treasury.

Section 12942 R. S. Missouri, 1939, provides as follows:

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"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. When any criminal case shall be taken to the courts of appeals by appeal or writ of

error, it shall be their duty to represent the state in such case in said courts, and make out and cause to be printed, at the expense of the county, and in cities of over 300,000 inhabitants, by the city, all necessary abstracts of record and briefs, and if necessary appear in said court in person, or shall employ some attorney at their own expense to represent the state in such courts, and for their services shall receive such compensation as may be proper, not to exceed twenty-five dollars for each case, and necessary traveling expenses, to be audited and paid as other claims are audited and paid by the county court of such county, and in such cities by the proper authorities of the city."

In the case of State ex rel Stewart v. Wofford, 116 Mo. 220, l. c. 223, we find the following general proposition of law:

"It is well settled law that no officer is entitled to fees of any kind unless provided for by statute, and that the law conferring such right must be strictly construed because of statutory origin and right. Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675; Ford v. Railroad, 29 Mo. App. 616."

Therefore, upon the authority of this general proposition of law, it is incumbent that we trace the history of Sections 12941 and 12942, supra. In doing this, we find that Section 12941 was enacted in its present form in the laws of Missouri, 1913, Page 108 and that Section 12942, has been on our statute books in the present form since the Laws of Missouri, 1881, Page 37. Therefore,

when the legislature saw fit to enact Section 12941, and provided in said Section, as we have heretofore pointed out, "that it shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues to his office and to receive the same and at the end of each month to pay over to the county treasury all moneys collected by him as fees," we think that this Section is broad enough to cover the \$25.00 charge that might be allowed as a fee under Section 12942, supra, and further, as we have shown, Section 12941, supra, was passed many years after Section 12942.

In the case of State v. Cummins, 292 S. W. 1061, 1. c. 1062, the Court had this to say:

"We think there is no question but that the statute provides for two offenses--one for failure of the prosecuting attorney to make out an itemized and accurate list of all fees in his office which have been collected by him and to turn such list over to the county court of Clay county; and the other the failure to make out a similar list of all fees due his office which had not been paid. Each offense is complete within itself, and it will be noted that section 737 provides for a fine 'for each offense.'

* * * * *

It will be noted that the Court in this opinion particularly refers to all fees and the prosecutor's failure to make out a similar list of all fees due his office.

We call your attention to the case of State ex rel Brown, 146 Mo. 401, 406, where the court said:

"It is well settled that no officer is entitled to fees of any kind unless pro-

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vided for by Statute, and being solely of statutory right, the statute allowing the same must be strictly construed."

However, we are of the opinion that a prosecuting attorney is entitled to the necessary travelling expenses that may be incurred by him in the performance of his duties under Section 12942, supra.

CONCLUSION

In conclusion, we are of the opinion that any compensation allowed a prosecuting attorney under Section 12942, supra, must be accounted for by him in his report, and turned over to the county treasury as a collected fee. However, we are of the opinion that a prosecuting attorney is entitled to the necessary travelling expenses that may be incurred by him in the performance of his duties under Section 12942, supra.

Respectfully submitted,

APPROVED:

B. RICHARDS CREECH
Assistant Attorney General

VANE C. THURLO
(Acting) Attorney General

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