

W. J. Smith
CORONER:
COUNTY OFFICER'S FEE:

Coroner and employees of Jackson County
entitled to charge fee and retain same for
rendering unofficial duties not incompatible
with statutory duties.

November 25, 1946



Honorable Michael W. O'Hern
Prosecuting Attorney
Jackson County
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for
an opinion which reads:

"Dr. James C. Walker, Coroner of Jackson
County, Missouri, has requested me to ask for
an opinion from your office concerning the
allowance of fees to the Coroner of Jackson
County, Missouri.

"His request includes the following specific
questions:

"(1) When the Coroner performs a post-mortem
examination, insurance companies often requests the
coroner for affidavit concerning the cause of death.
Query: May the coroner of Jackson County, Missouri,
legally collect and retain a fee for the making of
such affidavit and may a notary public employed in
the office of the coroner legally collect and retain
a fee for acknowledgement of such affidavit.

"(2) The coroner keeps a record of all autopsies
performed by his office. Requests are often made to
the coroner to furnish copies of these reports. Query:
May the coroner of Jackson County legally collect and
retain fees for supplying copies of said autopsy
reports.

"(3) Whenever an autopsy hearing is had before
a coroner's jury, the testimony of all the witnesses
is taken in shorthand and transcribed by an employee
of the coroner's office. Requests are often made by
individuals or insurance companies for copies of such
transcripts. Query: May an employee of the coroner's
office of Jackson County legally collect and retain
fees for supplying copies of these transcripts to
interested parties."

It is well established under the law that no public officer is entitled to fees of any kind for performing official duties unless it is provided for by statute. Furthermore, that the rendition of services by a public officer is deemed to be gratuitous unless compensation therefor is provided by statute. See *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 344 Mo. 795. Also *Ward v. Christian County*, 111 S.W. (2d) 182, 341 Mo. 1115.

In view of the foregoing authorities, if the services mentioned in your letter constitute official duties required of said officer and employees, then they are only entitled to such fees as are provided by law, and in the absence of any such provision allowing them compensation, they shall perform same gratuitously. A careful search of the statutes fail to disclose wherein those services specifically mentioned in your request are a part of the official duty of said officer and employees. Nowhere is there any statute either requiring or authorizing such officer and employees to furnish persons certified copies of affidavits, documents and transcripts, so it naturally follows there is likewise no statutory fee or compensation for such service.

Section 13444, R.S. Mo. 1939, requires a coroner to account for all fees collected, giving the date same were collected, the case, and the name of the person entitled to same. Section 13247, R.S. Mo. 1939, allows a fee for the coroner for taking down testimony at an inquest and for certifying the same. However, there is no provision for furnishing certified copies to individuals, insurance companies, etc. Section 13424, R.S. Mo. 1939, authorizes various other fees for services rendered by the coroner. Section 13259, R.S. Mo. 1939, provides that in counties containing more than 100,000 inhabitants, the county court, in its discretion, may fix a salary for the coroner in lieu of all fees. However, said salary shall not exceed \$4,000.00 per annum. Subsequent thereto, the 63rd General Assembly passed House Bill No. 828, which is now effective, and specifically repeals Section 13259, supra. Section 13465, page 532, Laws of Mo. 1941, fixes a salary for coroners in counties having a population of 350,000 and less than 750,000, which applies to Jackson County, Missouri. Furthermore, Section 3739, R.S. Mo. 1939, provides that certified copies of proceedings before coroners holding an inquest, over the body of an employee receiving injuries in course of employment, resulting in death shall be admissible in evidence. However, there is no mention of a fee for such services rendered by the coroner.

Therefore, we are forced to the conclusion that such services are not official duties as prescribed under the law.

The question now boils down to whether persons performing such unofficial services may charge a fee and retain said fee for such unofficial services rendered. We are unable to find any authority in the State of Missouri directly in point. However, we do find decisions in other states holding that fees or compensation may be charged by a person or persons rendering unofficial services, and said persons may retain said fees or compensation so long as the service is not incompatible with the duties of the respective offices. In *State v. Holm*, 70 Neb. 606, a petition for a writ of mandamus was filed against the defendant to compel him as Register of Deeds of Lancaster County to enter certain money on his fee book and account for and pay over same to the county. While the defendant was Register of Deeds, the City of Lincoln required every applicant for a saloon licence to obtain a certificate of the Register of Deeds showing that persons signing the licensee's petition were freeholders. The defendant made a search of the records and furnished many certificates. For such investigation he charged \$3.50, and, in addition thereto, 50¢ for a certificate as Register of Deeds. He reported in the fee book the 50¢ for the certificate and paid same to the county, but did not report the \$3.50 fee for investigation, claiming that the \$3.50 was no part of his official duties. The defendant was on an annual salary, and it was contended that he received the foregoing fees by virtue of his office and should account for same. The court conceded that, if the services rendered were a part of his official duty, there would be no question but that he should account for same and pay said fees into the treasury. The cases the relator cited in support of his petition under the fact showed the services rendered by the public officers constituted a part of their official duties, and, therefore, such cases were not in point. The court finally concluded in the above case that the services rendered by the respondent constituted no part of the official duties of his office, and held that such money paid for such extra services under a private contract or agreement could not be recovered by said relator, and, therefore, the District Court committed no error in denying the writ and dismissing said action.

In *Moore v. Sheppard*, a very recent decision reported in 192 S.W. (2d) 559, the Supreme Court of Texas held that the general principle prohibiting public officers from charging fees for performance of their official duties does not prohibit them from charging for their services for acts that they are under no obligation under the law to perform. In that case several clerks of Courts of Civil Appeal sought a mandamus to compel George H. Sheppard, Comptroller of Public Accounts, to issue warrants on the State Treasury for the payment of their salaries. It seems that said clerks were allegedly indebted to the State, and there

was a state statute which provided that no warrant shall be issued to any person indebted to the state. The indebtedness referred to consisted of money received by petitioners for furnishing uncertified and unofficial copies of opinions of their respective courts. The facts show that it is undisputed that said clerks received money for furnishing such copies and retained said money. The law required said clerks to receive a fee of 10¢ for each 100 words for making copies of any papers or records in their offices, including certificate of seals. The Attorney General of the State of Texas had construed such provision to not include the furnishing of uncertified unofficial papers. The court, in granting said writ, said, l.c. 562:

"There being no statutory duty requiring petitioners to furnish uncertified, unofficial copies of opinions of the Courts of Civil Appeals, no statute fixing any fee for such services, and no valid statute requiring that money received therefore be deposited in the State Treasury, there is no debt owing by petitioners to the State. Since petitioners are not required to account to the State Treasurer, under the existing statutes, for such receipts, they cannot be required to execute an affidavit that such funds have been deposited in the State Treasury as a condition for the delivery of their monthly salary warrants.

"The mandamus prayed for by petitioners is granted."

CONCLUSION

Therefore, it is the opinion of this department that the services referred to in your request do not constitute a part of the statutory duty of said coroner and employees, and that such services are not incompatible with their statutory duties; and, in view of the foregoing authorities, said coroner and employees may charge a fee for such services rendered and retain same.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

ARM:LR