

CIRCUIT CLERKS,) Clerk of the circuit court may demand
) payment in advance for certified copies
FEES:) of records in his office.



January 14, 1952

1-15-52

Mr. B. C. Tomlinson
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Farmington, Missouri

Dear Mr. Tomlinson:

We have given careful consideration to your request for an opinion, which request is as follows:

"The Circuit Clerk is continually getting requests from inmates of the penitentiary for certified copies of the complaint, warrant, information, and sentence and judgment in their criminal cases and no money is sent to cover the costs to the clerk for preparing same and none is sent the clerk when he prepares these documents and incloses his bill. Is the Circuit Clerk obliged to prepare these documents free of charge and can he demand payment for same in advance before he goes to all the trouble of preparing them?"

The fees allowed clerks of the circuit courts for their services in criminal proceedings are enumerated in Section 483.530, RSMo 1949. And this list includes such items as those mentioned in your request.

May the clerk demand payment for these documents before going to the trouble of preparing them? The law in Missouri is entirely silent on this question. The clerk, however, "shall charge and collect for the county

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in all cases every fee accruing to his office," as provided by Section 483.550, RSMo 1949. He must "pay monthly into the county treasury the amount of all fees collected by virtue of his office except fees collected in cases of change of venue from other counties," as provided in Section 483.560, RSMo 1949.

Within the clear meaning of the law the clerk of the circuit court is under legal duty to exercise due care and diligence in collecting the fees of his office and turning them over to the county treasurer. He may in certain cases find it expedient to demand payment in advance of the service, and there is no reason for holding that he may not do so.

The general rule of law governing this question is defined in Corpus Juris Secundum, Vol. 67, page 359, as follows:

"Where a statute prescribes the fees which an officer shall receive and omits specially to provide when, how and by whom they shall be paid, the person at whose request the service is rendered is liable and the officer is entitled to payment as the services are performed. Fees are sometimes payable in advance of the performance of the official service wanted, and a statute intended only to prevent the exaction of larger fees than the law allows does not prevent the collection of the prescribed fee in advance in a proper case; but under some provisions, the state is entitled to have particular papers filed without paying the filing fee in advance, as is required of private individuals. When an officer is unable to collect his fees for services performed from the person liable to pay them, he must bear the loss, and an officer who inadvertently or otherwise files a paper for which a fee is required to be paid is forthwith bound to account for such fee whether or not he collected it at the time the paper was left for filing. An officer is protected in refusing to deliver official papers, or in

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retaining papers and documents in his possession in respect of which he has rendered service, until the fees are paid."

(Underscoring ours.)

This principle was upheld by the Supreme Court of Iowa in Ripley v. Gifford, 11 Iowa 367. In the course of that opinion, at page 370, the court said:

"There is no statute fixing the fees of Secretary of State, Clerk of the Supreme Court, Recorder, Sheriff, Coroner, Constable, Notary Public, Justice of the Peace or County Surveyor. And yet beyond controversy, they are each entitled to compensation for their services. This compensation, if not fixed and settled at the time the services are required, would be what the same were reasonably worth. Each officer may also, in our opinion, if he so desire, require the pre-payment of fees for the services demanded. Or, for any services rendered, he may retain any papers or documents in his possession in and about which he has bestowed labor, until the reasonable value of said services shall be paid. Thus if the clerk of the Supreme Court, or a justice of the peace, is required to issue an execution, he may either demand the pre-payment of his fee therefor, or refuse to deliver the same after its preparation, until such fee shall be paid. * * *"

CONCLUSION

It is the opinion of this office that the clerk of

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the circuit court may demand payment in advance for certified copies of records in his office.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



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BAT/fh