

CONSERVATION COMMISSION:
COUNTY CLERKS:
SALARIES AND FEES:

Section 51.150, RSMo Supp. 1963, requires the county clerk to file a certified list of all salaries and nonaccountable fees received by each elected county official by virtue of his office. County Clerks are not required to include service fees received for distributing hunting, fishing, trapping and replacement permits in this list as a county clerk does not receive these fees by virtue of his office.

OPINION NO. 155

May 18, 1964

Honorable James W. Williams
State Representative
2010 North Fourth Street
St. Joseph, Missouri

Honorable J. T. Campbell
State Representative
Faucett, Missouri

Gentlemen:

This is in answer to your request for an opinion of this office which reads as follows:

"Respecting Section 51.150 passed by the last Legislature which requires the reporting of salary and fees, I would like an opinion as to whether or not this includes all salary and all fees of all officers. Also whether fees for sale of hunting and fishing licenses are included as fees within this statute."

Section 51.150, RSMo Supp. 1963, sets out the duties of the clerk of the county court. The 1963 Legislature amended this section by adding paragraphs (5) and (6) which require the county clerk:

"(5) To compile and keep a list of all salaries and nonaccountable fees received by each elected county official by virtue of his office for each calendar year. The source of each fee shall be itemized, the amount of mileage allowance received shall be reported, and the total fees less expenses shall be shown. Each elected official shall certify and give the necessary information on his office to the clerk of the county court;



"(6) To file a certified list of all salaries and nonaccountable fees received by each elected county official by virtue of his office for the preceding calendar year before March first with the secretary of state."

In answer to your first question the statute makes no exception to the requirement that all salaries and nonaccountable fees received by each elected county official by virtue of his office should be reported. If you have any questions concerning specific salaries or fees other than those received from the sale of hunting and fishing licenses, we will be glad to consider them.

Regarding your second question, the distribution of hunting, fishing, trapping and replacement permits are regulated by the Rules and Regulations of the Conservation Commission, promulgated under Article IV, Sections 40(a) - 41, Constitution of Missouri, 1945, and Section 252.020(1), RSMo 1959.

Rule 2.25 reads as follows:

"A. The clerks of each county (sic) court of all counties with less than 200,000 population are appointed as distributing agents for hunting, fishing, trapping and replacement permits for the Conservation Commission. Each distributing agent shall appoint sub-agents as the Commission may require to aid in distribution of permits, and the Commission will designate additional distributing agents under the same conditions and requirements as apply to the county clerks.

"Each distributing agent shall enter into a bond provided by the Commission and payable to the State of Missouri in a sum to be fixed by the Commission. The bond shall fix the county, city or areas the distributing agent is to serve, and shall be conditioned that he will faithfully perform the duties delegated to him and shall accept, receipt for and remit to the Conservation Commission at the close of each month, all monies derived from the distribution of such permits, less and except the service fee of twenty-five (25) cents.

"B. The total service fee charged for the issuance of any one permit shall not exceed twenty-five (25) cents, which is in addition to the permit fee fixed herein. The charging or collecting by any distributing agent or person of any fees in excess of those stated herein is unauthorized and prohibited.

"C. A replacement for a lost, destroyed or mutilated hunting, fishing or trapping permit may be issued only by the distributing agent who issued the original permit, upon payment of twenty-five (25) cents plus a service fee of twenty-five (25) cents.

"D. Commercial and miscellaneous permits and replacements therefor may be issued only through the Commission office at Jefferson City upon receipt of proper application and the required permit fee. No service fee is required for such permits, but a fee of twenty-five (25) cents is required for a replacement permit."

In counties of less than 200,000 population, the clerk of the county court is appointed as distributing agent and collects a service fee for issuing the permits. The county clerk is an elected county official, Section 51.020, and the service fee is a nonaccountable fee within the meaning of Section 51.150 (5) and (6). Inasmuch as the duty of the county clerk to distribute permits and collect fees therefor is not prescribed by statute but by a regulation of the Conservation Commission, there arises the question, does the county clerk receive these fees by virtue of his office. We think the answer to this question must be no. The distribution of hunting and fishing permits is not one of the official duties of the county clerk. He is individually appointed by the Conservation Commission and may decline this appointment if he so desires. This was the holding in Walsh v. County of St. Louis, Mo., 353 SW2d 779, in which the court said, 1.c. 785:

"* * * One accepting the appointment as such distributing agent in a given area acts in his individual capacity and not in his official capacity if he is also

the county clerk. Plaintiff became the agent of the Commission for selling and issuing its licenses or permits and performed a service in another and distinct department of the public service than that of County Clerk of St. Louis County.* * *"

It is our opinion that the service fees received by a county clerk for distributing permits for hunting, fishing, trapping and replacement permits are not fees received by virtue of his office. Therefore, the county clerk is not required to include these fees in the certified list required by Section 51.150 (5) and (6).

There are two counties in this State with a population of 200,000 or more, Jackson and St. Louis. The City of St. Louis is included in St. Louis County. The Commission has its own offices in each county and an employee of the Commission is in charge of distributing permits therein. He also works through sub-agents who charge the twenty-five cent service fee and retain the usual ten cents. However, the employee is salaried and all service fees not retained by the sub-agents are returned to the Commission and held in a special fund. The requirements of Section 51.150 (5) and (6), do not cover these fees as they are not received by an elected county official.

CONCLUSION

Section 51.150, RSMo Supp. 1963, requires the county clerk to file a certified list of all salaries and nonaccountable fees received by each elected county official by virtue of his office.

County clerks are not required to include service fees received for distributing hunting, fishing, trapping and replacement permits in this list as a county clerk does not receive these fees by virtue of his office.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,


THOMAS F. EAGLETON
Attorney General