

February 28, 1933. ✓✓



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

Your request for an opinion from this department upon the matter of fees of circuit clerks has been referred to the undersigned for attention. You request an opinion upon the following question:

"This department would be pleased to have an opinion from the Attorney General as to the total amount of fees allowed to a Circuit Clerk in any county, particularly as to whether or not the Circuit Clerk is entitled to retain in addition to his regular salary paid to him by the County Court, fees received from any or all of the following sources: drainage district cases, change of venue cases, i. e., cases coming in from other counties, and fees for making up transcripts in sending a case out of the county on a change of venue.

Has the proviso contained in the latter part of Section 11811, R. S. Mo. 1929,

***** Provided, that the clerks of the circuit courts shall be allowed to retain, in addition to the fees and deputy hire allowed under this section, all fees earned by them in cases of change of venue from other counties; ****

been repealed by implication by any later or other law, or is it still in effect?

The only sections pertaining to fees of Circuit Clerks, that we are able to find, are Sections, 1175, 11786, 11787, and 11810 to 11830, R. S. No. 1929."

11786

Section 11876 R. S. No. 1929, provides in substance that the clerks of the circuit courts shall receive for their services annually certain sums dependent upon the county population. In counties having a population of less than 7,000, the clerk shall receive no salary but shall be allowed to retain all fees earned by him, out of which he shall pay his deputies and assistants. In any county wherein the clerk of the circuit court is ex officio recorder of deeds, the offices shall be considered one for the purpose of said section. The section is not applicable to counties containing a city of 75,000 population or more, or to counties containing 80,000 and less than 150,000 population in which circuit court is held in two or more places; a method is therein provided for ascertaining the county population. The duties of a circuit clerk who is also ex officio recorder are therein set forth.

Sections 11785, 11787 and 11788 R. S. No. 1929, set forth the fees to be charged by the respective clerks for their services in connection with said office.

Section 11813 R. S. No. 1929 provides that the circuit clerk and his deputies shall be paid out of the county treasury in monthly installments, etc.

Section 11814 R. S. No. 1929, provides in part that,

"It shall be the duty of the clerk of the circuit court to charge and collect for the county, in all cases, every fee accruing to his office and to which he may be entitled under the provision of Sections 11785, 11787 and 11788 or of any other statute,
Such clerk shall, at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month,
..... upon the filing of said report to forthwith pay over to the county treasurer all monies collected by him during the month"

Section 11816 R. S. No. 1929, provides a penalty for failure of the clerk to pay into the county treasury the money collected by him as fees from said office.

Section 11850 R. S. No. 1929, is the repealing clause brought forward into this statute from the laws of 1915, pp. 378 and following, which was the original Act changing the method for payment of salary of circuit clerks from a sum dependent upon the amount of fees collected by them in their respective offices to that of an annual salary irrespective of such collected fees.

By reference to the repealing clause in the Session Act 1915, p. 380, it will be seen that the intention of the Legislature was to repeal so much of the law then in existence as was in conflict or inconsistent with said new act. The law in force at that time, with reference to the compensation of circuit clerks, was Section 10722 R. S. No. 1909, and amendments thereto in the Session Act 1911, p. 384, and the Session Act 1913, p. 702, which provided as has been stated that the circuit clerk should retain the fees collected by him up to a given amount, dependent upon the county population, and, among other provisions, said section and amendments thereto contained the following:

"Provided, that the clerks of circuit courts shall be allowed to retain, in addition to the fees and deputy hire allowed under this section, all fees earned by them in cases of change of venue from other counties;"

Section 11815 R. S. No. 1929, being a part of Section 10722 R. S. No. 1909, contains the same provision as herein above set out with reference to change of venue fees.

Section 10722 R. S. No. 1909, was specifically named in the repealing clause of the 1915 act and said section being inconsistent with the laws of 1915 with reference to the payment of circuit clerks, was thereby repealed as to all counties to which the act was made applicable.

In the Session Act of 1921, p. 606, the Act of 1915 was sought to be amended. The act of 1921, however, by reason of the defective title thereto, was declared by the court in the case of State ex rel Summers v. Hamilton 312 No. 157, to be inoperative. In the Session act of 1931, p. 189, the attempted amendment of 1921 was repealed.

From the above and foregoing it is the opinion of this department that Section 11876 R. S. No. 1929, fixes the full compensation of all clerks of the circuit court to which said

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section is made applicable, and that such clerks are not entitled in addition thereto to the compensation or fees mentioned in Section 11815, supra, but, to the contrary, all fees accruing to said office and so collected by said clerk, must be turned over to the county treasurer in accordance with the statutory provision as hereinabove set out, and he shall receive his salary upon a warrant issued upon the treasurer. Said salary, as we interpret the statute, is in lieu of all fees, including those in charge of venue cases.

Yours very truly,

CARL C. ARINGTON
Assistant Attorney-General.

APPROVED: _____

ROY McKITTRICK
Attorney-General.

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