

COV WARRANTS:--Salary warrants held in possession of county clerk for purpose of distribution to payee not subject to garnishment.

See 1396 R.S. No. 1929
June 13, 1933 *6-14*
See 1396 R.S. No. 1929

FILED

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28,

Hon. Elliott M. Dampf
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter of June 8, 1933, which is as follows:

"Will you kindly advise the undersigned if a Justice of the Peace may attach a salary warrant in the hands of the County Clerk, after said warrant has been signed by the County Treasurer and returned to the County Clerk for distribution to the officials."

A garnishment being directed to your county clerk makes it necessary for him to file an answer to same. In his answer he should state the facts regarding his holding the warrant for the owner as stated in your letter; also, that he does not have in his possession any goods, moneys or effects of the person mentioned in the garnishment; that he is a public officer; that the salary warrant is payable to the person it is issued to and must be presented by such person (or his assignee, executor or administrator) to the county treasurer for payment; that the warrant is an order on funds held by the county treasurer; and the county treasurer is not subject to garnishment. The filing of an answer makes up the issue in the matter.

Section 1396 R. S. No. 1929, reads as follows:

"All persons shall be subject to garnishment, on attachment or execution, who are named as garnishees in the writ, or have in their possession goods, moneys or effects of the defendant not actually seized by the officer, and all debtors of the defendant, and such others as the plaintiff or his attorney shall direct to be summoned as garnishees."

You will note that this statute makes all persons subject to garnishment on attachment or execution if they have in their possession goods, moneys or effects belonging to the defendant or if they be a debtor to the defendant. The question then would be whether or not the county clerk was a debtor of the defendant or if he had in his possession goods, moneys or effects of the defendant? You state the county clerk is holding the salary warrant for the sole purpose of distribution to the person entitled to it. This brings us to the question as to what does the salary warrant represent and how county funds are held and disbursed?

Section 12136 R. S. Mo. 1929, provides that the county treasurer shall receive all moneys payable into the county treasury and disburse same on warrants drawn by order of the county court. Section 12163 R. S. Mo. 1929, provides that when a demand against a county is presented to the county court it shall (after determining the sum due from the county) order its clerk to issue a warrant therefor. Section 12171 R. S. Mo. 1929, provides that no county treasurer shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator. This section further provides that if there be no money in the treasury the treasurer shall so certify such fact on the back of the warrant. Section 12172 R. S. Mo. 1929, provides a form of assignment for the warrants.

You will note that the funds of the county are in the possession of the county treasurer and same are disbursed by warrants drawn upon the funds, and that payment of warrants are made to the person to whom they are issued after they are presented to the county treasurer by him or his assignee, executor or administrator. Thus no one except the person to whom they are issued have any interest in them and for any person to have an interest in them they must be assigned.

The law is well settled that a county treasurer may not be garnisheed. Section 1396 R. S. Mo. 1929, in part reads as follows:

" * * nor shall any county collector, county treasurer or municipal corporation, or any officer thereof, " * * "

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be liable to be summoned as garnishee; * * *
Hawthorne v. City of St. Louis, 11 Mo. 59
Shepard v. Cape Girardeau, 1 S. W. 305."

From the foregoing it is our opinion the salary warrant held for distribution by the county clerk is not subject to garnishment on attachment or execution.

Yours very truly,

JAMES L. HORNBOSTEL,
Assistant Attorney General.

APPROVED

Attorney General.

J.H:MM