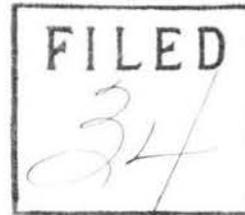


2 ✓ ✓ ✓  
CIRCUIT CLERKS & PROSECUTING ATTORNEYS: Cannot apply money collected on salary.

✓ COUNTY WARRANTS: 1932 warrants cannot be paid out of 1933 revenue.

11-3  
October 23, 1933.



Hon. L.G. Graven,  
County Treasurer,  
Lincoln County,  
Troy, Missouri.

Dear Sir:

Your letter addressed to General McKittrick with post script attached has been handed to me for reply, same being as follows:

"There has been some collections from this office that I do not think are proper and am asking your opinion in writing: First does the Circuit Clerk have the right to collect fees from criminal cost and hold same for salary; second, does Prosecuting Attorney have right to collect any of said fees from Treasurer's office for any cause; third, can any warrant either school or county of 1932 issue be paid out of 1933 revenue.

I would appreciate the above information as soon as possible."

I.

The Circuit Clerk does not have the right to collect fees from criminal costs and hold the same for salary.

In answer to your first question, we are enclosing copy of an opinion rendered to Hon. Howard R. Maness, Prosecuting Attorney, Doniphan, Mo., which we believe fully answers your question.

## II.

Prosecuting Attorney does not have the right to collect any of the fees from the Treasurer's office for any cause.

We assume that this question embodies the same condition as your first question and relates to the Prosecuting Attorney's right to apply any fees which might come into his hands on his salary.

We refer you again to the same opinion (Hon. Howard R. Maness) wherein the question has been answered to the effect that the Prosecuting Attorney cannot apply fees in payment of his salary.

## III.

Warrants, school or county, of 1932 issue cannot be paid out of 1933 revenue.

The leading case in Missouri on this question is that of *Kansas City, Fort Scott & Memphis Railroad Company v. Thornton*, 152 Mo. 570; l.c. 575-576. In this case the Court said:

"As claimed by counsel, Section 3205 has been on our statute books since 1835, but prior to the adoption of the Constitution of 1875 there was no organic law which stood in the way of its enforcement. The result was, overwhelming debts were contracted, which necessarily went unpaid or excessive taxation had to be levied to pay them; the effect of which impaired the credit of the counties and cities, engendered recklessness and extravagance in the management of the public business and constantly oppressed the tax-payers. These were the evils that sections 11 and 12 of article X of the Constitution were intended to remedy, first by limiting the rate of taxation and, second, by limiting the yearly expenses to the revenue provided for each year. The wisdom of these safeguards has been fully demonstrated by the experience and improved financial status of the counties and cities since those provisions were adopted. It is the duty of the courts to enforce the organic law and to brush aside any statute which conflicts with it whether it was passed

before or after the Constitution was adopted. Under these provisions of the Constitution warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued, and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, only the surplus of revenue collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year. The intended effect of all which is to abolish the credit system and to establish a cash system in public business. If this rule results in any county not having money enough to pay as it goes or to run its governmental affairs, the remedy is not with the courts. Having reached this understanding of the meaning of the Constitution it follows, without the necessity of any analytical examination or comparison of statutes or prior decisions, that all statutes or decisions providing or holding a contrary rule must give way."

In view of this decision, it is the opinion of this department that the 1932 warrants cannot be paid out of 1933 revenue.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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