

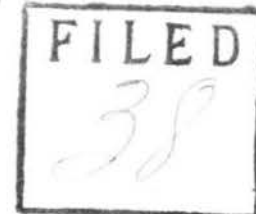
COUNTY CLERK'S FEES:

County Clerk must account for fees received in his official capacity in making his return and settlement with the county.

May 22, 1933. ✓

11810-11-7108

RS Mo 1929



Mr. T. J. Harper,
Prosecuting Attorney,
Galena, Missouri.

Dear Sir:

We are acknowledging receipt of your letter of May 13, 1933, as follows:

"Will you please give me opinion on the Law governing the following questions:

No. 1. Is making the Tax Books of Incorporated Towns a duty conferred on the County Clerk and a fee of the office of the County Clerk?

No. 2. Is clerking for the Equalization Board a duty of the County Clerk, and a fee of the office of County Clerk.

No. 3. Is making out Financial Statement a duty of the County Clerk, and a fee of the office of County Clerk? Does the County Clerk have to set these fees related above, making Tax Books Inc. Towns, making Financial Statement, Clerking for the Equalization Board out in his settlement to deduct his salary from a Deputy Hire?

Does he have to account for these fees, the same as any other fee of his office?

No. 4. Is the Circuit Clerk's salary computed by multiplying by $3\frac{1}{2}$ the same as the County Clerk's salary?"

Section 11810 R. S. Mo. 1929, provides that the Clerk of Courts of Record shall make quarterly returns, etc. Among other things, the Section provides,

"Every clerk of a court of record in every county in this state shall make return quarterly to the county court of all fees by him received to date of return, from whom received and for what services, giving the amount of each fee received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit. Such statement shall include all fees for all services of whatever character done in his official capacity, giving the name of

of each deputy or assistant, the length of time each was employed, and the amount of money paid to each."

Section 11811 R. S. Mo. 1929, provides, among other things, as follows:

"The aggregate amount of fees that any clerk under articles 2 and 3 of this chapter shall be allowed to retain for any one year's services shall not in any case exceed the amount hereinafter set out."

Then follows in that Section the amount of salary clerks shall receive in certain counties, according to the population.

In State ex rel Hickory County v. Dent, 121 Mo. 162, it was held that the County Clerks are chargeable for all fees received by them in their official capacity under the Statutes, and that they had to include the amount allowed them by the Court for the keeping of the county's accounts with its officers. The court held that all fees received by the County Clerk in his official capacity had to be returned and accounted for under the Sections above cited.

In the case of Callaway County v. Henderson, 119 Mo. 32, the County Clerk contended that he had a right to retain a \$400.00 allowance made by the County Court for keeping the county's account with the Treasurer, and other services in addition to the \$1800.00 specifically provided for by the Statute for counties of that size. The court, however, in construing what is now Section 11810 and Section 11811, held that the amount set forth in Section 11811 was the maximum amount which the clerk would be allowed to retain for any year's services, and that all other fees or compensations in addition thereto must be surrendered to the county.

Section 7108, R. S. Mo. 1929, makes it the duty of the county clerk to furnish a certified abstract of his assessment books to the trustees of the town. The county clerk, therefore, in his official capacity, is required to furnish the list, and his fees received therefor must be accounted for by him.

In answer to your second inquiry, we beg to advise that fees received by the county clerk resulting from adjusting the assessment books, according to the order of the County Board of Equalization, must be accounted for by the county clerk in his quarterly return, the same as other fees. While the county clerk is a member of the County Board of Equalization, yet the clerical work resulting from the action of the Board, is performed by him in his official capacity as county clerk, and not as secretary to the County Board of Equalization. This particular point has been passed upon by our Supreme Court in the case of State ex rel v. Adams, 172 Mo. 1, in which the court decided that fees

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accruing as a result of adjusting the assessment books were received by the county clerk in his official capacity, and, therefore, must be accounted for by him in his settlement with the county.

In answering your third inquiry, we are of the opinion that the preparation of the financial statement is a duty imposed by law upon the county clerk in his official capacity, and that any fee must be accounted for by the clerk in his return and settlement.

In answering your fourth question, it is our opinion that in determining the population of a county in arriving at the amount of salary to be paid the circuit clerk, that the total number of votes cast in such county at the last presidential election shall be multiplied by three and one-half, as provided in Section 11811 R. S. No. 1929.

In summarizing, therefore, it is the opinion of this Department that the county clerk must account in his statement and in his settlement with the county of all fees received by him in his official capacity in the instances above mentioned. We believe these fees are on the same basis as other fees which he is authorized to receive as county clerk. If he fails to account for them in his return and settlement he will be liable upon his bond.

Very truly yours,

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S