

PROSECUTING ATTORNEY)
FEES

In what form to be paid to the County
Treasurer.

11315 R.S. Mo. 1929

July 14, 1933.



Hon. J. E. Johnson
Treasurer
Ripley County
Doniphan, Missouri

Dear Mr. Johnson:

This office is in receipt of your letter of June 26th, relative to the form of payment of fees by the Prosecuting Attorney in your County. You desire an opinion from this office upon the following question as submitted in your letter:

"Section 11315, R. S. Mo. 1929, provides that the Prosecuting Attorney shall pay over to the County treasurer all moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the Clerk of the County Court.

Is the Prosecuting Attorney allowed to pay these fees with a salary warrant or is he required to pay the fee in money as collected?"

Section 11315, R. S. Mo. 1929, the pertinent part bearing on the question in your letter, is as follows:

"It shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately

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file with the clerk of the county court, and shall at the end of every quarter make out an itemized and accurate list of all fees in his office which have been collected by him, and one of all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid-- said report to be verified by affidavit-- and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury."

From the foregoing section it will be noted that the prosecuting attorney of your county shall charge on behalf of the county every fee that accrues in his office and at the end of each month pay over to the county treasurer all moneys collected by him as fees, taking two receipts therefor.

In construing this statute, it is the opinion of this office that the salary warrant mentioned in your letter can be accepted by you in payment of the fees collected by the prosecuting attorney during the month. We cannot construe the statute as specifying any special form of specie, currency or check by which it should be paid. The statute does not make it mandatory on the prosecuting attorney to pay over such fees until at the end of each month and we cannot construe the statute to mean that the prosecuting attorney must hold his fees in the original form and pay them over to you at the end of the month.

However, we call your attention to this contingency which might arise, in the event that the salary warrant offered to you by the prosecuting attorney is not worth the full amount of its face value or is subject to discount as is the condition of the warrants in some counties, you would then be placed in a position of having given to him your receipt and not receiving in return the full amount of his fees, you would then be short in your accounts which might subject you to action on your bond.

Hon. J. E. Johnson

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In conclusion, for your own protection you would be within your just rights to demand of the prosecuting attorney the cash or the equivalent of the same or a check which is entirely satisfactory to yourself.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

OWN:EG