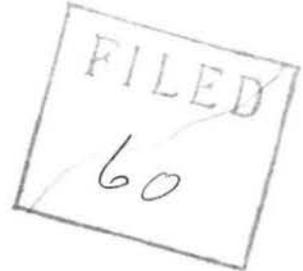


PROSECUTING ATTORNEY, CIRCUIT CLERK -- cannot apply money for collection of fees to payment of salary. -- must be paid into county treasury. Sec. 11315, 11314, 11317, 11813, 11814, 11816, 11817, 11830, R.S. Mo. 1929.

January 28, 1933

Hon. Howard R. Maness  
Prosecuting Attorney  
Ripley County  
Doniphan, Missouri



Dear Sir:

Your recent letter to the Attorney General's office has been handed the undersigned for attention. You ask an opinion upon the following, to wit:

"Where county officers, such as the Circuit Clerk and Prosecuting Attorney who receive a definite salary regardless of the fees that are collected, is it mandatory that they turn their fees into the county and take warrants for their entire salary, or may they apply these fees collected by them to their salary.

"Due to the fact that Ripley County is very much in debt the officers are inclined to retain their fees and deduct this amount from their salaries."

Section 11315, R.S. Mo. 1929, among other things, provides:

"It shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues to his office, and to receive the same, and that at the end of the month to 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."

Section 11314, R.S. Mo. 1929, provides:

"The prosecuting attorney shall receive for his services per annum to be paid out of the county treasury, etc."

\*Section 11317, R.S. Mo. 1929, provides:

"Penalty for failure of the prosecuting attorney to comply with any provision of the section just quoted."

Section 11813, R.S. Mo. 1929, provides that:

"The salary of the clerk and that of his deputies and assistants, shall be paid out of the county treasury, in monthly installments, at the end of each month, and that the clerk and his deputies and assistants shall present their accounts to the county court, and said court shall draw its warrant therefor upon the county treasury."

Section 11814, R.S. Mo. 1929, provides 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 provisions of sections 11785, 11787, and 11788 or any other statute, except, etc.: that he shall file with the county clerk a report of the fees accruing to his office, and that it shall be his duty upon the filing of said report to forthwith pay over to the county treasurer all moneys collected by him during the month and required to be shown in such monthly report."

Section 11816, R.S. Mo. 1929, provides:

"It shall be the duty of such clerk within fifteen days (referring to the order provided in section 11810) has been made to pay over to the county treasury the amount of money so ordered paid, and to take duplicate receipts therefor, one to be by him filed in the office of the clerk of the county court, who shall thereupon charge the treasurer with the amount thereof, and if the clerk should fail to pay the money so ordered into the county treasury, the county court shall cause suit to be filed upon his official bond."

Section 11817, R.S. Mo. 1929, provides:

"For a penalty upon the failure or neglect of the clerk to file his statement within the time required."

Section 11830, R.S. Mo. 1929, provides also for:

"A penalty for every person violating the provisions of that article."

which is Article 2, Chapter 84, R.S. Mo. 1929.

Hon. Howard R. Maness-3

January 28, 1933

It will be seen that the word "shall" is used in the above statutory provisions, and such word as used therein, is a word of command, imperative, and leaves no discretion in the matter. The word "shall" will be presumed to be used in the sense as indicated unless something in the character of the statutes or the subject to which it relates, or in the contents, show that such could not have been the intention of the legislature.

Black on Interpretation of Law, p. 531;  
State ex rel Stephens v. Wurdeman, 295 Mo. 1. c. 586;

Where a statute provides what results shall follow upon the failure to comply with its terms, such statute is mandatory and must be obeyed. The above quoted sections relating to the officers herein named employing the language as above designated with reference to their duties being considered, it is our opinion that they are required to pay over to the county treasury moneys and fees collected by them in their respective offices, and that they will not be permitted to apply the fees so earned to the payment of their respective salaries, but upon the contrary, shall receive their salaries from the county and be paid by county warrants as provided by law.

Very truly yours,

Charl C. Abington,  
Assistant Attorney-General

CCA/N

Approved

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Roy McKittrick,  
Attorney-General