

TAXATION AND REVENUE:-Laws of Missouri 1933, page 419, imposing upon County Clerk the duty to ascertain benefits in the assessment of drainage and levee districts, makes no provision for compensating the Clerk for such services.

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October 18, 1933.

Mr. Henry M. Phillips,
Prosecuting Attorney,
Bloomfield, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am writing you for your opinion relative to the construction of certain parts of Senate Bill No. 34 approved March 18, 1933, printed in Laws of Missouri 1933, at pages 419, 420 and 421.

The following questions have arisen in my County in connection with the work required to be done by the County Clerk under this law, viz:

1. What provision, if any, is made by this law, or by any other statute, for determining the amount of compensation for the County Clerk for these services?
2. Should the compensation of the County Clerk for his services under this law be paid by the County from the County revenue fund, or should it be paid by the different drainage districts?
3. Should the County Clerk furnish the required information concerning lands situate in what are commonly termed circuit court drainage districts, or should such information be prepared and furnished by the secretaries of such drainage districts?
4. Is the County Clerk required to account for his compensation, if any, received for his services under this law as a part of the maximum amount of fees he can retain for the salary of himself and his deputies, or is this compensation to be excluded from such maximum amount like the County Clerk's fees which are earned in the organization and incorporation of the county court drainage districts?

The County Court and the County Clerk of this County desire to comply with the laws of this State with respect to the above matters and have requested my

opinion upon them. This law, however, does not appear to be an amendment of any existing revenue law and believing that the same questions will arise or have already arisen in many counties in this State and that the law should have the same construction in every county, I consider it advisable to request an opinion from you upon these questions."

Laws of Missouri 1933, page 420, Section 2, provides as follows:

"It is hereby made the duty of the clerks of the county court to ascertain and determine the aggregate amount and/or amounts of the portion of then existing benefits assessed and/or levied, if any, against lands and other property situate within the limits of all drainage and/or levee districts now organized or that may be hereafter organized under the laws of this state for reclamation and/or protection purposes, in their respective counties and for which portion of assessed benefits no levy and/or assessment for principal has been paid, exclusive of delinquent levies and/of assessments, together with the aggregate amount of principal bonds issued under and by authority of such drainage and/or levee district that are unpaid, if any, and the aggregate amount of all sinking funds, if any, available solely for the payment and discharge of such principal bonds, and in addition thereto the aggregate amount, if any, of such principal bonds herein referred to as are then delinquent and past due, separately stated, and shall also certify the aggregate amount and/or amounts of the portion of then existing benefits assessed and/or levied against any lands or other property situate within the limits of such drainage and/or levee districts that are or may be exempt from taxation for general purposes under the laws of this state, if any, and for which portion of assessed benefits no levy and/or assessment for principal has been paid, exclusive of delinquent levies and/or assessments, together with any other information that may be necessary or required in order that the provisions of this act may become effective and the equalizing of the valuations of lands and other property situate within the limits of all drainage and/or levee districts organized or that may hereafter be organized under the laws of this state for reclamation and/or protection purposes for taxation for general purposes may be expedited, and to, at the time such clerks of the county court are now, or hereafter may be, required by law to make out and forward to the state auditor, the abstract of the assessment book showing the aggregate amounts of the different kinds of real and personal property and the valuation thereof, transmit the information above referred to, to the state auditor, to be laid before the state board of equalization. It is hereby made the further duty of the several clerks of the

county court to retain a copy of the information, matters and things as herein provided, to be laid before, and for the use of the county boards of equalization and appeals."

We find no provision whatever in Section 2 for the payment to the county clerks for the services rendered under said section. This is a new duty imposed upon county clerks. We have diligently searched all of the statutes which have to do with the allowance of fees to county clerks and we have failed to find any provision in these statutes which authorize the county clerks to charge for the services required under the above section.

In *Jefferson Bank v. Refrigerating Company*, 236 Mo. 407, 414. the court says:

"When the law requires a specific service to be performed by a public officer, he must perform that service regardless of whether any provision has been made to pay him for same."

In *Sanderson v. Pike County*, 195 Mo. 598, 605, the court says:

"It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it."

In *State ex rel. v. Hackmann*, 265 S. W. 532, 534, the court says:

"Before the state can be held liable for the payment of a fee or expense incurred in its behalf, a person or official claiming such fee or expense must be able to point out the law authorizing such payment."

In view of the foregoing decisions, before any public officer can claim fees for services performed as such officer, he must be able to point out the statute authorizing the allowance of the fee. The above section makes no provision whatever for compensation for the county clerk in performing the duties required by it. We fail to find in any other section authority for charging for these particular services.

1. In answer to your first inquiry, therefore, we must reluctantly rule that the law does not authorize the allowance of any compensation to the county clerk for the services performed under the above section.

2. In answer to your second inquiry, in view of our holding as to your first inquiry, we must rule that neither the county or the district is obligated to pay for these services.

3. In answer to your third inquiry, we are of the opinion that Section 2 above referred to, makes it the duty of the clerk of the county court to furnish the information required, whether the district be organized under the circuit court or otherwise. The purpose of this Section is that the State Board of Equalization shall be furnished with the information required therein, in order that the assessments throughout the states may be equalized. We find no provision in said Section which would relieve you from furnishing this information for all of the drainage or levee districts. No doubt, however, the secretaries of the districts will be glad to co-operate with you in furnishing this information.

4. In answer to your fourth inquiry, since we have concluded that the clerk is not allowed additional fees for the services performed under this section, the question of whether or not such fees have to be accounted for passes out of the picture.

We realize that this section will impose additional burdens upon the county clerks. It is apparent, however, that at the time the fees for county clerks were provided for, that this new way of assessment was not in contemplation of the law makers. No doubt, at the first opportunity, the Legislature will make adequate provisions to cover this section. As stated above, we have not been able to find any authority for the allowance of fees for the services required by the above section. If, however, you can point out to us any section of the statutes which we have overlooked which might be the basis for the allowance of fees in this connection, if you will call them to our attention, we shall be glad to render you an additional opinion concerning them.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

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