

COUNTIES:- Under Section 12165, Laws of 1933, pages 355-356,
COUNTY CLERK:-county clerk, where he becomes a designated person
under said section, may receive compensation for furnishing financial statement, but cannot collect compensation for preparing financial statements for years 1930, 1931 and 1932, as statutes then in force did not authorize such compensation and clerk cannot prove contract with county court to pay him for such services

3-5
February 27, 1934.



Mr. Melvin Englehart,
Prosecuting Attorney Madison County,
Fredericktown, Missouri.

Dear Sir:

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

"Under Section 12165 Laws of 1933, of Missouri, it is provided that county courts of each county in the State shall prepare and publish in some newspaper, in said county, a detailed financial statement of the said county for the year ending December 31 preceding. The above mentioned section further provides that the said financial statement shall be prepared either by the county clerk or someone designated by the county court to prepare the said statement. Section one of this act repeals Sections 12165 and 12166 R. S. of Missouri 1929.

Under the sections repealed there is no provision as to the compensation for a county clerk who prepares the annual financial statement. Also, there is no provision that in case a county clerk is paid on the statutory salary basis that he shall receive any additional compensation for the statement.

At the present the county clerk of this county is requesting the county court to pay him the compensation as set out in Section 12166, Laws of 1933 of Missouri for the preparing of the financial statement of this county for the year ending December 31, 1933. In addition to this he has requested the county court to compensate him for each financial statement prepared for the years of 1930, 1931 and 1932. There is nothing in the county

court record of this county, to show that the county court has at any time ordered the county clerk to prepare the financial statement and there is nothing in said records to indicate the amount of compensation that anyone should receive. So far as the record is concerned, the financial statements of this county for the years of 1930, 1931 and 1932 were voluntarily made by the county clerk and the court accepted such statements and at no time did he mention to the court, when such statements were accepted by the court, and approved that he was demanding compensation for the work in addition to his regular statutory salary. The first demand made for such compensation for the years of 1930, 1931 and 1932 was made February 8, 1934.

The county clerk has informed the court that if the compensation for the years 1930, 1931 and 1932 are not paid on the same basis as that for the 1933 statement, that he will bring suit to collect same.

Please give an opinion on this matter as quickly as possible, as said cause will probably be tried in the March term of the circuit court of this county."

I.

Section 12166, Laws of Missouri 1933, pages 356, 357, provides for the payment for the person designated to prepare the financial statement for the county. Said Section, among other things, provides:

"****The county court shall not pay the publisher until said proof of publication is filed with the court and shall not pay the person designated to prepare the statement for the preparation of the copy for said statement until the state auditor shall have notified the court that said proof of publication has been received and that it complies with the requirements of this Section. ****For the preparation of the for the statement the court may allow not to exceed the price per hundred words and figures permitted to the clerk of the court for the writing of the record and no pay shall be allowed for pasting printed copy in the record.****"

Section 12165, Laws of Missouri 1933, pages 353-356, among other things, provides:

*****Or if no one has been designated said statement having been prepared by the county clerk, signature shall be in the following form:

Clerk of the County Court and ex-officio officer designated to prepare financial statement required by Section 12165 Revised Statutes 1929.*****

Under the foregoing section the county court is authorized to appoint as a designated person to prepare the financial statement any person, or upon a failure of the court to designate a person to prepare the financial statement required by Section 12165, the county court becomes the officer designated under the statute to prepare the financial statement. Under Section 12166, it is the duty of the county court to pay the person designated whether it be an outsider or the county clerk for preparing the financial statement, and the amount of compensation is limited not to exceed the price per hundred words and figures permitted to the clerk of the Court for the writing of the record, and no pay shall be allowed for pasting the printed copy in the record. In view of the foregoing statutes we believe that the Legislature has authorized and directed the county court to pay the county clerk for performing the service of preparing the financial statement whenever the county court has failed to designate some other person to prepare this statement.

In answer to your first inquiry, therefore, it is the opinion of this Department that where the county clerk of your county, as such, became ^{the} ex-officio officer designated to prepare the financial statement, as required by Section 12165, that such clerk may recover compensation for preparing such statement for the year 1933, at which time Sections 12165 and 12166 were in effect.

II.

However, in dealing with the right of the county clerk to collect the same compensation for the years 1930, 1931 and 1932, we believe that you have an entirely different situation. Section 12165 and Section 12166, Laws of Missouri 1933, pages 355-356, became effective on July 24, 1933, and therefore were not in effect during 1930, 1931 and 1932. Such being true, the county clerk cannot base his right to compensation for making the financial statement for those years upon sections 12165 and 12166, Laws of Missouri 1933, pages 355-356. The right of the clerk to collect compensation for 1930, 1931 and 1932, inclu-

for making financial statements must be determined by the law in effect at that time, which were Sections 12165 and 12166, of the Revised Statutes of Missouri, 1929, which are as follows:

"Section 12165: And the said courts shall at the same time make out a statement of the amount of debt due by their counties and a detailed statement of receipts into and disbursements from the county treasury, such statement to show, separately, the amount received in each fund--first, from the general tax book; second, from the railroad tax book; third, from billiard and other table licenses; fourth, ferry licenses; fifth, from land back tax books; sixth, from personal delinquent lists; seventh, fines and penalties; and, eighth, from other sources. The disbursements shall be classified under separate heads: 'Salaries and fees,' 'Costs in criminal cases,' (Roads and bridges,' 'Support of paupers,' 'Support of poor persons in lunatic asylums,' 'Support of boys in reform schools,' 'Support of girls in industrial home for girls,' 'Books and stationery,' 'Repairs of public buildings and fuel,' 'Expenses of election;' and such other classes as may be necessary, together with the names of the persons to whom warrants were drawn, and the total expended for each class of expenditure shall be given. The statement shall also show the amount of the last land and personal delinquent lists, of the uncollected land back tax books and the personal delinquent lists returned more than one year. It is made the duty of the state auditor to furnish the forms of such annual statements which shall be used in making such statement."

"Section 12166: The facts thus ascertained and the account and statement thus made out shall be entered of record in said courts and published in some newspaper in each county where any such may be printed, and if there be no newspaper published in the county, then copies of the same shall be put up in the most conspicuous place in each township of the county, by the sheriff, within three weeks after the adjournment of the term at which the proceedings mentioned shall have been had. One

copy of such published statement shall be filed in the office of the clerk of the county court and a certified copy of such statement shall be transmitted to the state auditor on or before the last day of May in each year. The statement herein required to be made and published shall be in lieu of all other statement of receipts and expenditures of counties required by law to be made and published."

Neither Section 12165 or Section 12166, R. S. Mo. 1929, carry any provision for compensating the county clerk for making the financial statement required under those sections. It is a well settled law in this State that whenever a county official seeks to impose a charge upon the county and collect a fee for services performed, he shall be able to point out the section in the statutes which authorizes the payment of the fee. It is evident from the reading of those sections that no provision is made for the payment of the fee demanded in this case. The rule is announced in Sanderson v. Pike County, 195 Mo. 598, 605, as follows:

"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 that he may perform as such officer, unless the statute gives it. (State ex rel. v. Adams, 172 Mo. 1-7; Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220, Givens v. Daviess Co., 107 Mo. 603; Williams v. Chariton County, 85 Mo. 645, Gammon v. Lafayette Co., 76 Mo. 675)."

It is apparent from the foregoing decision that before the county clerk can claim compensation he shall point out the statute which authorized the payment of the fee. The foregoing sections do not authorize the payment of any fee, and such being true, the county clerk is not entitled to any compensation by reason of the statutes. Since he is not entitled to any compensation by reason of the statutes, then the only other basis upon which he

can claim compensation is that the county court might have entered into a contract with him for the purpose of preparing that statement. We do not believe, however, that the facts stated in your inquiry will support such contention. It appears from your letter that the records of the county court are absolutely blank in so far as any contract between them and the county clerk is concerned with reference to the compiling of this financial statement. You state that the work was done voluntarily by the county clerk and although he has made no claim for such compensation for the years for which the statements were made, he now, for the first time, claims his right to be paid.

The county court is a court of record and can only speak through its records. It has no right to deal with any person or to charge the county for any commodity or service unless the records of the county court evidence the contract. It is said in *Sanderson v. Pike County*, 195 Mo. 590, 604:

"The county court is a court of record, and its acts and proceedings can only be known by its record. A contract with such court cannot be established by parol evidence. (*Maupin v. Franklin Co.*, 67 Mo. 327; *Dennison v. County of St. Louis*, 33 Mo. 168). No record of the county court was produced on the trial of this cause fixing the treasurer's compensation under either of the foregoing sections of the statute."

The same doctrine is announced in the case of *Maupin v. Franklin Co.*, 67 Mo. 327, 329, where the Court held that it was error to admit parol evidence as to an alleged contract with the county court, the court saying:

"The court below erred in admitting parol evidence as to the alleged contract made with the county court. A county court, like any other court of record, can only speak by its record, and the statute (1 Wag. Stat., 419, Art. 5), expressly requires that such courts (keep just and faithful records of their proceedings.' The obviously correct principle that parol evidence is inadmissible to prove a contract with the county court, was announced at an early day in this State. (*Medlin v. Platte County*, 8 Mo. 335; *Milan v. Pemberton*, 13 Mo. 598.) It seems to be thought the case of *Boggs v. Caldwell Co.*, (28Mo.586), enunciates a

different rule, but it will perhaps be found that case proceeded on the ground that the formality of entering an order of record was unnecessary, when relating to 'books in the office' of the clerk; and the verbal order in that instance was treated as analagous to one for furnishing ice during the session of court, or benches for by-standers. And even the authority of that case has been doubted in *Reppy v. Jefferson Co.*, (47 Mo. 66,) and it certainly seems that the proper, and if we give heed to the statute and the earlier decisions above noted, the only course to pursue is in every instance to let the record speak the only utterances of the court entitled to recognition. It has often been held by this court, in accordance with this view, that when a contract had been made with a county court, the record of that court was the only legitimate evidence admissible in support of the contract. (*Dennison v. County of St. Louis*, 33 Mo. 168 and cases cited; *Reppy v. Jefferson County*, supra.)"

The only case which we find that seems to stand for the proposition that the county court can be bound by a contract not appearing of record is the case of *Boggs v. Caldwell County*, 28 Mo. 586, cited in the above quotation. That case was not approved in the case of *Reppy v. Jefferson County*, 47 Mo. 66, cited in the same quotation. The *Boggs* case was cited with disapproval in the case of *Harkreader v. Vernon County*, 216 Mo. 606, 706, where the Court, in refusing to follow it, says as follows:

"****The case of *Riley v. Pettis County*, 96 Mo. 318, is cited as authority for the proposition that the court erred in excluding the offer of testimony, but that case is not in point. It does not hold that the official action, whatever it be, of the county court ought not to be shown by its record. It holds that the mere record of the county court would not bind the other contracting party, if any, and that his assent or refusal to assent might be shown by parol. We are cited to *Boggs v. Caldwell Co.*, 28 Mo. 586; but that case was limited and distinguished in *Dennison v. St. Louis Co.*, 33 Mo. 168, and was doubted in *Reppy v. Jefferson County*, 47 Mo. 66, and its authority still further shaken in *Maupin v. Franklin County*, 67 Mo. 327. It has not been followed heretofore and we shall not follow it now."

In view of the foregoing cases and the criticism in the Boggs case, and the refusal of the court to later follow it, we deduce the rule to be that before any person, county officer or otherwise, can hold the county court under a contract made with it, that such contract must be evidenced by the records of the county court, through which alone the court can speak. Those cases hold that it is not proper to attempt to prove a contract with the county court by parol testimony, and that unless the contract is evidenced by the records of the county court there is no evidence to support the making of the contract.

In view of the foregoing cases we conclude that the county clerk cannot collect for the years 1930, 1931 and 1932 by reason of the statute for the reason that the statute does not authorize the payment of any compensation for the making of a financial statement. We further conclude that the county clerk cannot recover against the county by reason of a special contract made with the county court for the reason that the records of the county court, through which alone the court can speak and be bound, do not show that any such contract was ever entered into. Having decided adversely to the clerk's contentions of these two propositions, the sole question remaining is whether the clerk may collect on the basis of quantum meruit. In *Wolcott v. Lawrence County*, 26 Mo. 272, 273, the Court says:

"The petition in this case does not aver a contract of any kind with the county court but the plaintiff seeks to recover upon quantum meruit. In our opinion the county is not liable upon an implied promise."

CONCLUSION.

In view of the foregoing it is therefore the opinion of this Department that the county clerk is entitled to compensation for making the financial statement for the year 1933, if he becomes a designated person under Section 12165 and Section 12166, Laws of Missouri 1933, pages 353-356. It is our further opinion, however, that the county clerk, upon the facts stated in your letter, cannot recover compensation for making the financial statement for the county for the years 1930, 1931 and 1932 because:

(1) The Laws of Missouri, 1933, pages 353-356 and Sections 12165 and 12166, which furnish the basis for compensation for the making of the 1933 financial statement, were not in force during the years 1930, 1931 and 1932.

(2) Sections 12165 and 12166, R. S. Mo. 1929, which were in force during the years 1930, 1931 and 1932 made no provision for the payment of any compensation for the making

of such financial statements, and such being true, the official cannot point out the authority for collecting any compensation.

(3) The records of the county court do not disclose that any special contract was ever made with the county clerk in which they agreed to pay him any compensation for this service, and such being true, such contract cannot be proved by parol evidence.

(4) The clerk of no other person is entitled to recover against the county upon a quantum meruit for the reason that the county is not liable upon an implied promise.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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