

UNTY OFFICERS: NECESSITY OF CIRCUIT CLERKS ACCOUNTING WITH MONEY
AND NOT IN SALARY WARRANTS FOR MONEYS COLLECTED
AND DUE AND OWING THE COUNTY.

July 27, 1934.

8-11-34



Hon. Sol Hobb,
Circuit Clerk of Stoddard County,
Bloomfield, Missouri.

Dear Sir:

Your letter of June 12, 1934, has been received. In this letter you state and inquire as follows:

"We previously wrote you about accepting warrants for our salaries over and above the fees this office collects and we have your answer, with opinion as to the same.

Our letter did not probably state the facts exactly as we wanted to, for what we wanted to know was could we turn in to the County Treasurer, the warrants we receive for our salary, in lieu of the fees we collect in this office and that we settle for at the end of each month.

Your careful consideration of this matter and a ruling on same would be appreciated very much. The Circuit Judge, Mr. Billings, has told us to write you."

I find no direct statutory pronouncement on the question you have submitted for an opinion. However, I do find in numerous statutes references to the method and manner in which the circuit clerk should account to the county treasurer for such county funds as the circuit clerk has collected, and the method and manner governing the cashing of county warrants.

I refer you to Section 11814 R. S. Mo. 1929, which reads as follows:

" * * * * * It shall be the duty of the circuit clerk, 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 as hereinabove provided, taking duplicate receipts therefor, one of which shall be filed with the county clerk, and every circuit clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided. * * * * *

You will note that, in the above statutory provision, the statute contemplates that all moneys received by the circuit clerk shall be accounted for, to the county treasurer. Such statute, apparently, does not contemplate any other means of making said accounting, than with money, or its equivalent.

Section 11830 provides a penalty for the violation of this Section, which reads as follows:

"Every person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense in any sum not less than fifty dollars nor more than one thousand dollars, and conviction thereunder shall work a forfeiture of his office. (R. S. 1919, 11830)"

As to the question of payments of warrants, I find the following provision in Section 12171 R. S. No. 1929:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same. (R. S. 1919, 9560)"

In support of this Section is Section 12153 R. S. No. 1929, which provides that:

"All collectors, sheriffs, marshals, clerks, constables and other persons chargeable with moneys belonging to any county shall render their accounts to and settle with the county court at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county court within five days thereafter. (R. S. 1919, 9551)."

In support of the position I am taking in this opinion, I refer you to Section 12140 R. S. No. 1929, which makes a special provision for the county collector, for the receipt of warrants lawfully received in payment of taxes, which Section reads as follows:

" * * * * * Provided, however, that nothing herein contained shall prevent the treasurer

from receiving from the collector all scrips and warrants lawfully received by him in the payment of county tax. * * *

I find no such exception providing for the reception of county warrants by the county treasurer from the circuit clerk.

Along the same tenor is Section 9911 R. S. No. 1929, which states:

"* * * * Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant. * * * *

I find that circuit clerks and other employees of the county are given preference for the payment of their warrants by virtue of Section 12139 R. S. No., which reads as follows:

"* * * * Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated. (R. S. 1919, 9637)"

In reference to the payment of county warrants, I find the statutory law above set forth well supported by the following excerpt from 15 C. J. Section 315, Page 606:

"As a general rule orders or warrants against counties can be satisfied only out of the revenue available for the payment of the claims represented by such orders and warrants; and where a county order or warrant is on its face payable out of a special fund, the holder having accepted the same can look only to such fund for the payment of his claim, and cannot recover payment after such fund has been exhausted, unless the county has diverted the money of such fund from the payment of the warrants drawn against it and has used the same for other purposes. * * * * *

It is necessary to inquire into the nature and character of county warrants before definitely deciding the question before us. I look to 15 C.J., Section 307, Page 598 for a specific definition, which reads as follows:

"A county warrant is merely an order on the treasurer to pay a certain sum of money. While it is prima facie evidence of an indebtedness on the part of the county and of the validity of the claim for which it was issued, it is not a conclusive adjudication in the sense that a judicial decision is, and the county is not estopped from afterward questioning its validity. Also it is but evidence of a pre-existing indebtedness; it is not a debt, except within the meaning of some constitutional provisions, when it is to be satisfied out of the revenues of future years. In a sense a county warrant is a promise by the county to pay, and it has been likened to a promissory note, although it is to be distinguished from a bond, and it does not possess the elements of a contract. It is a means and a safeguard provided by law for the disbursement of the public money of the county by the officers intrusted with its keeping and disbursement, it being specifically provided by statute in some jurisdictions that no money can be paid out of the treasury of the county except on a warrant issued by the proper authorities. * * *

If the circuit clerk were allowed to account by way of salary warrants for county moneys collected by said clerk, such a practice would allow the circuit clerk to settle cash obligation to the county with unmatured obligations, it would in substance allow the circuit clerk to cash his salary warrant in a manner contrary to the statutes, which require warrants to be registered and paid out of certain funds in regular order. In addition, such a practice would possibly delay the payment of salaries of other county officials, due to the fact that county moneys had been used to cash the salary warrants of the circuit clerk.

The 1933 Legislature passed the County Budget Law, which provides that three classes of claims shall be paid prior to the payment of the salary of any county officer. - Laws No. 1933,

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p. 340. To allow an officer collecting for and on behalf of the county fees, to apply such fees to his salary, in some instances might constitute him a preferred creditor over classes 1, 2 and 3 of the new Budget Law in the event that the county treasury did not have sufficient funds to pay all classes in full.

It is, therefore, the opinion of this department that a circuit clerk must account to the county treasurer in money, or its equivalent, for all moneys collected by said circuit clerk belonging to the county, and that to account for said moneys by using unmatured county warrants is illegal.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

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