

COUNTY CLERK:

Not Entitled to count/words in calculating fees
under Section 9877, page 421, Laws of Missouri,
1933.

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March 20, 1934.



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

Acknowledgment is herewith made of your recent inquiry to this office requesting an opinion on the following matter:

"On August 30, 1933 your Department rendered us an opinion in which you established a basis for the words and figures that the County Clerk was entitled to under Section 10007.

The 57th General Assembly repealed Sections 9876 and 9877, R. S. Missouri, 1929, and wrote two new Sections in lieu thereof in which they eliminated the old process whereby the County Clerks extended the taxes in the Assessor's Book and then made a copy of that book for the use of the Collector and supplemented in these Sections a new process whereby the County Clerk makes his extensions in the Assessor's book and then turns that book to the Collector as the tax book.

In Section 9877 of the 1933 Laws is specified the Clerk's compensation as follows:

'The Clerks of the County Courts shall receive ten cents per hundred words and figures for all words and figures extended by him in making out the tax book.'

Some of the County Clerks contend that in the words and figures for which he is allowed compensation under the new law should include the words and figures entered in that book by the Assessor and also the printed words and figures entered when the book was made, basing their claim upon the opinion above referred to.

We would like to have an opinion from your Department which will construe for us clearly the "words and figures" referred to in Section 9877 of the 1933 Laws."

The pertinent parts of Sections 9876 and 9877 as found on pages 421 and 422 Laws of Missouri, 1933, read as follows:

"As soon as the Assessor's book shall be corrected and adjusted, the Clerk of the County Court, except in St. Louis City, shall, within ninety days thereafter, extend the taxes therein in proper columns prepared for such extensions, which book, with the taxes so extended therein, shall be authenticated by the seal of the Court as the Tax book for the use of the Collector; * * * *"

"The clerks of the county courts shall receive ten cents per hundred words and figures for all words and figures extended by him in making out the tax book, one-half thereof to be paid by the state and other half by the counties, respectively: Provided, that compensation of clerks for making out and certifying to the auditor an aggregate abstract of the tax book shall be paid by the state."

As stated in your letter, the purpose of the change in these two sections was to do away with the copy of the tax book heretofore required to be made by the clerk, and to constitute the Assessor's book, when duly extended by the County Clerk, the tax book itself. No "copy" of the tax book is contemplated at all by these sections and the Clerk for his services is limited to ten cents per hundred words of the words and figures "extended by him." It is a recognized rule that any official must be able to lay his finger on the statute allowing him compensation. It is equally a well recognized rule that all such laws are to be strictly construed against the official. As stated in the case of State ex rel. vs. Brown, 146 Mo. 401, 1. c. 406:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. * * * *"

It would be very difficult to give Section 9877 a liberal enough interpretation so as to include compensation to the County Clerk for words and figures other than those actually extended by him. It is apparent that we must construe this section strictly and in doing so we conclude that he is only entitled to compensation for the words and figures actually written by him.

No confusion should arise by reason of the previous opinion of this office respecting Section 10007. That opinion was applicable only to an interpretation of that section. On the face of it it is apparent that it applies only to the copy of the tax book for the use of the Collector as was contemplated by Section 9876 R. S. Mo. 1929, prior to the 1933 amendment, while Section 9877 herein considered applies to the original tax book itself as contemplated by Section 9876 as changed by the 1933 Legislature. We believe that no serious difficulty arises as to the interpretation of the instant law.

We also refer to the well recognized rule that where a statute particularly provides for a mode of compensation that mode or compensation is exclusive and compensation cannot be claimed in any other manner or under any other law. As stated in the case of King vs. Riverland Levee District, 279 S. W. 195:

"* * * our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. McCracken, 80 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing the same. State ex rel. Evans vs. Gordon, supra."

Compensation being particularly provided for the Clerk under Section 9877, that compensation is exclusive and other or different compensation could not be calculated under the provisions of Section 10007.

Hon. Forrest Smith.

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CONCLUSION.

It is therefore the opinion of this office that County Clerks shall receive ten cents per hundred words and figures for making the extension in the tax book as provided in Sections 9876 and 9877, Laws of Missouri, 1933, pp. 421 and 422, and that in calculating this compensation, words and figures written by the Clerk are to be included, but printed words and figures or those written in by the Assessor are to be excluded.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

HGW:MM