

COUNTY CLERKS: Fees received by county clerk by virtue of Section 11679, R. S. 1929, must be accounted for.

12-14
December 13, 1934.



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge your letter of December 12, 1934, as follows:

"Section 11679 R. S. Missouri 1929 provides that the County Court may employ the clerk to bunch, label and index papers. Where a County Court makes an order of record directing the County Clerk to bunch, label and index certain papers in the County Clerks office, are the fees paid to the County Clerk for above services accountable fees or will that be money over and above the legal amount the County Clerk may retain as fees of his office."

The county court is a court of record. Sections 1 and 36, Article VI, Constitution of Missouri. Section 36, provides in part as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law."

Section 1826, R. S. Mo. 1929, provides:

"The supreme court of the state of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

Chapter 77, R. S. Mo. 1929, provides for clerks of courts of record. Section 11664 of said article and chapter provides in part as follows:

"At the general election in the year eighteen hundred and eighty-two, and every four years thereafter, except as hereinafter provided, the clerks of all courts of record, except of the supreme court, the St. Louis court of appeals, and except as otherwise provided by law, shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor ----- and shall hold their offices for the term of four years, and until their successors shall be duly elected and qualified, unless sooner removed from office."

From the above we conclude that a county clerk is a clerk of the court of record.

In your letter you refer us to Section 11679, R. S. Mo. 1929, and we herewith quote said section, as follows:

"Whenever, in the opinion of any court of record, or the judge or judges thereof in vacation, it shall be necessary for the papers in cases remaining on file in the office of the clerk of such court to be bunched and encased in suitable envelopes or wrappers, labeled and reindexed, such court, or the judge or judges thereof in vacation, may order the clerk of said court to perform such service. And each clerk shall keep a correct account of the work and labor performed in complying with such order, and the court shall audit said account, and shall allow the clerk an amount for such service as shall be reasonable."

A reading of that section shows that when any court of record, (which includes a county court) shall deem it necessary for papers in cases remaining on file in the office of the clerk of such court to be bunched and encased in suitable envelopes or wrappers, labeled and reindexed, such court shall order the clerk of said court to perform such services. It is thus seen that this section is primarily directed to circuit courts or clerks of the circuit court. However, it may apply to county courts and your inquiry concerns clerks of the county court and we are thus writing this opinion hypothesized on that fact. Said section provides that the court may order the clerk of said court to perform this duty, thus imposing a duty upon the clerk of the court to perform when directed by the court. When directed by the court to perform the duty provided by said section, then the clerk is entitled for his services a reasonable amount of money for compensation, same to be fixed by the court ordering the work performed.

Section 11781, R. S. Mo. 1929, provides that the clerks of the county courts shall be allowed fees for their services. The county clerk receives into his office certain fees from work performed by him or by virtue of his office and he is permitted to retain out of these fees a certain amount which is his compensation for being county clerk. However, he must earn the amount of his salary from the fees received.

Laws of Missouri, 1933, page 370, Section 11811, provides in part as follows:

"The aggregate amount of fees that any clerk of the County Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. * * * Provided, further, that until the expiration of their present term of office, the person holding the office of County Clerk shall be paid in the same manner and to the same extent as now provided by law provided that this act shall not apply to counties in which such clerks now or may hereafter receive a fixed salary in lieu of all fees, commissions and emoluments."

Above we have concluded that a county clerk is a clerk of a court of record and that Section 11679 imposes upon him a duty to perform, when ordered, and gives to him a reasonable compensation for performing such services. The question arises as to whether or not the county clerk, if he performs such services by virtue of Section 11679, supra, must account to the county court for the fee received, or will such money be over and above the legal amount the county clerk may retain as fees of his office? In our opinion, the fee received by virtue of said section must be accounted for. In reaching this conclusion we direct your attention to Section 11810, R. S. Mo. 1929, which in part provides as follows:

"Every clerk of a court of record in every county in this state shall make return quarterly to the county court of all fees by him received to date of return, from whom received and for what services, * * * * *"

As stated above, it is our opinion that fees received by a county clerk by virtue of Section 11679 must be accounted for and that same will not be money over and above the legal amount the county clerk may retain as fees of his office.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG