

COUNTY CLERK FEES: County Clerk not entitled under Section 11781 to
50¢ for attesting each county warrant.
SALARIES & FEES.

12-27
December 26, 1934.



Hon. Wm. Womack
County Clerk
Madison County
Fredericktown, Missouri

Dear Mr. Womack:

Acknowledgment is made of your request for an opinion of
this office on the following matter:

"Sometime ago we asked you to render an opinion
in regards to the amount of fees I could retain
for deputy hire, we received this opinion and
thank you for same. However, our Court has failed
to act claiming they are not sure of the amount
we are allowed for issuing County Warrants. Our
Prosecuting Attorney has written in regards to this
matter several times and has called your office long
distance but so far we have had no word in regard
to the matter. We have always charged fifty cents
as fees earned and as far back as we have record
of clerks fees which is 1899 our Courts has allowed
fifty cents and the clerk taking credit for a seal
and acknowledgment, we do not actually place the
seal on the warrant but take credit for same accord-
ing to Section 11678, attached herewith are warrants
now in use in this County.

Kindly render us an opinion as to what amount we
are allowed for issuing County Warrants and please
do so at once as our Court has held up payment to
us for the last five months. Kindly give this your
immediate attention and accept the sincere thanks."

Under the provisions of Section 12161 R. S. Mo. 1929, the
Clerk is required to issue warrants on the Treasury for all moneys
ordered to be paid by the Court. This Section reads in part as
follows:

"It shall be the duty of the clerk of the county court: * * * * * fourth to issue warrants on the treasury for all moneys ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof."

Under the provisions of Section 12163 R. S. Mo. 1929, it is provided:

"* * * * * When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form: * * * *"

Under the provisions of Section 12169 R. S. Mo. 1929, it is provided:

"When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was incurred for which the same was issued, and unless otherwise provided by law, in the following form: * * *"

Under the provisions of Section 12170 R. S. Mo. 1929, it is provided in part:

"Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament. It shall be signed by the president of the Court whilst the court is in session, attested by the clerk, and warrants shall be numbered progressively throughout each year: * * *"

All of the foregoing sections refer specifically to the issuance of county warrants by the clerk and his attestation thereof. Each of the sections is a part of Article VIII, Chapter 85. The last section of this Article, excluding the enactment of the 1933 General Assembly, not pertinent hereto, is Section 12183 which provides:

"The Court shall allow to the clerk of the county court, for his services under this article (except sections 12145, 12146 and 12147), such compensation as may be deemed just and reasonable."

By virtue of the foregoing section it has been customary in some counties to allow a small sum to the county clerk for keeping the account of the county with the county treasury and for also keeping the records of claims running to and against the county. This compensation also must include any allowance made to the clerk for issuing warrants. The sections laying this duty upon the Clerk are found in this article and would be covered by this section. In other words, this is a specific section fixing the compensation for the acts required to be performed by the Clerk under this Article.

We are not unmindful of the provisions of Section 11781 R. S. No. 1929, which is the general schedule of fees allowed county clerks. One item of this schedule reads as follows:

"For taking every acknowledgment of a deed or other instrument of writing to include the certificate and seal--50¢."

It is clear that this is a general statute allowing the specific fee for acknowledgment to deeds or acknowledgments of other similar instruments. In our opinion this refers specifically to acknowledgments of the type and character of those necessary to validate a deed to real estate. It is also specifically provided that this fee is to be allowed when the acknowledgment includes the certificate "and seal". Another item found in this schedule reads:

"For every certificate and seal not hereinbefore provided for---50¢."

This requirement also involves the attachment of the seal of the Court and is similar to the foregoing extract in that a full certification must be made to entitle the clerk to payment of the fee. By the foregoing letter it is apparent that you have not been affixing the seal of the Court to these warrants, therefore, it seems that there has been a failure to comply even granting this section were applicable.

Under the provisions of Section 1827 R. S. No. 1929, a seal of the County Court is established. Section 1828 R. S. No. 1929, reads as follows:

"When no seal is provided, the clerk may use his private seal for the authentication of any record, process or proceeding required by law to be authenticated by the seal of the court;

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and the attestation of the clerk, stating that he has no seal of office, and that he has affixed his private seal, shall be received as sufficient authentication, without requiring any proof of such private seal, or that it was affixed."

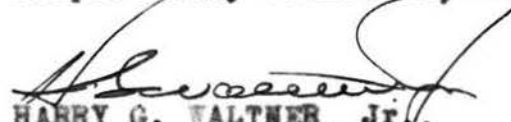
It is apparent that the affixing of the seal is necessary to properly authenticate any record of the county court and a failure to affix the seal would render the certificate insufficient.

The foregoing is not to be construed as a holding that seals are required to validate county warrants or that if the seal is affixed compensation can be allowed under the provisions of Section 11781. We simply direct attention to the foregoing so that there may be no question in your mind but that under the facts stated in your letter no compensation could be allowed under this section even if it were applicable.

C O N C L U S I O N

It is the opinion of this office that no compensation is allowable to the County Clerk for the issuance of county warrants under the provisions of Section 11781 and that if any compensation is allowed it must be by general order under Section 12183 R. S. Mo. 1929

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

HGW:MM