

CIRCUIT CLERK:

County is not liable to the Circuit Clerk for payment of the fees chargeable to the County.

2-19

February 8, 1935.

Hon. T. O. Carver
Prosecuting Attorney
Pulaski County
Waynesville, Missouri



Dear Sir:

This is to acknowledge receipt of your letter dated January 31, 1935, requesting an opinion from this office which reads as follows:

"Section 11814 Laws 1933 at page 373 excepts the Circuit Clerk's fees chargeable to the County from collection.

"The Circuit Clerk now gets a certain salary contingent upon his collecting or taking in sufficient fees to pay said salary.

"Supposing that over a period of time the Circuit Clerk's fees collected would be insufficient to pay his salary but if the fees due said Clerk chargeable to the County had been paid there would have been sufficient fees to take care of his salary allowance in full. Would the County be liable to the Circuit Clerk for payment of the deficit on the Clerk's salary occasioned by the costs chargeable to the County not being paid.

"That is would at anytime the County be required to pay the Clerk's fees on fee bills or cost bills

chargeable to the County.

"I shall greatly appreciate an opinion from you on this point."

Prior to the first Monday in January, 1935, the Circuit Clerk was paid a salary under the provisions of Sections 11786 and 11813, R. S. Mo. 1929. The Circuit Clerk now, under the provisions of Section 11786, Laws of Missouri, 1933, page 369, retains fees up to the amount specified in Section 11786, supra, as compensation for his services in lieu of the salary heretofore paid.

The Legislature clearly intended to pay the Circuit Clerk upon a fee basis; and by its repeal of Section 11813, supra, and the failure to enact a new section in lieu thereof, the Legislature made it clear that a Circuit Clerk should receive no compensation from the County treasury for his services.

The fees which a Circuit Clerk is allowed to charge, collect and retain up to the amount specified in Section 11786, supra, under the provisions of Section 11814, Laws of Missouri, 1933, are all fees accruing to his office except such fees as are chargeable to the County. Section 11814, supra, reads in part as follows:

"It shall be the duty of the clerks of all courts of record to charge and collect, in all cases, every fee accruing to their offices under the provisions of sections 11785, 11787, and 11788, or of any other statute, except such fees as are chargeable to the county. **** And quarterly such clerk shall pay into the county treasury the amount of any fees collected in excess of the sums permitted to be retained for services and pay of deputies and assistants, and every clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law. It shall be the duty of the county court to examine such quarterly report and to require of the prosecut-

ing attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, and, to that end, such prosecuting attorney shall have authority, at any time, to direct the issuance of any execution or fee bill for costs in any case in which any costs accruing to the county are unpaid."

It is plain from a careful reading of the above section that a Circuit Clerk is not permitted to charge and collect any fees from a county. We are therefore of the opinion that a County is not liable to a Circuit Clerk for any deficit in his yearly compensation, occasioned by the fact that costs chargeable to the County are not paid.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

JET/JLH:afj