

- 1178 COUNTY CLERK: (1) County Clerk not entitled to any fee for issuing county warrants or cancelling same but is entitled to a fee of five cents for filing each cancelled warrant.
(2) Not entitled to any fee for cancelling and filing school warrants.

March 30, 1935.

Hon. L. E. Cass
Clerk of the County Court
Webster County
Marshfield, Missouri



Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office which reads as follows:

"Please send me an opinion of fees due the County Clerk for issuing county warrants, also the cancelling fees due on same, also fees due in cancelling school warrants and filing same."

Section 11781, R. S. Mo. 1929, specifies the fees a clerk of the county court shall be allowed for performing various services of his office. The section is long and it would serve no purpose to set same out in this opinion. It suffices to say, said section does not allow the county clerk any fee for issuing county warrants or for cancelling same or for cancelling school warrants and filing same. Said section does allow the clerk five cents "for filing every paper not hereinbefore specified."

I.

We will now examine the statutes in regard to the duty of the county clerk in issuing, cancelling and filing county records.

Section 13161, R. S. Mo. 1929, requires the clerk to issue warrants on the treasurer to be paid by the county 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."

Section 12163, R. S. Mo. 1929, provides in part as follows:

***** 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 *****."

Section 12169, R. S. Mo. 1929, provides in part as follows:

"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: ****."

Section 12170, R. S. Mo. 1929, reads in part as follows:

"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:
****."

Section 12146, R. S. Mo. 1929, reads:

"Whenever any county court receives a county warrant from the treasurer of his county, as provided for in the preceding section, it shall be the duty of said court to cause the county clerk to write across the back of said warrant, with good red ink, the word 'canceled,' giving the dates thereof."

Section 12147, R. S. Mo. 1929, provides:

"It shall be the duty of the county clerk to see that all canceled warrants are filed and kept as other county records. **"

All of the foregoing sections refer to the issuance of county warrants by the Clerk, his attestations thereof and the cancelling and filing of said warrants by the Clerk. Said sections are a part of Article VIII, Chapter 85. Section 12183 of the same article and chapter reads as follows:

"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 above section, the county court can allow the county clerk such compensation as they deem just and reasonable for performing the services specified in Article VIII., Chapter 85, except the services performed under Sections 12145, 12146 and 12147. If the clerk is to receive any compensation for issuing county warrants, it must be included in the allowance made to the clerk under Section 12183 supra.

The compensation allowed a clerk under Section 12183, supra, is part of the fees of his office and must be accounted for and reported the same as other fees accruing to his office and said compensation cannot be retained in addition to

the aggregate amount of fees a clerk is allowed to retain under Section 11811, Laws of Missouri, 1933; but must be included therein. (Callaway County v. Henderson, 119 Mo. 32; State ex rel. v. Dent, 121 Mo. 162).

Section 12147, R. S. Mo. 1929, makes it the duty of the county clerk to file and keep all canceled warrants the same as all other county records. Section 11781, R. S. Mo. 1929, allows a clerk a fee of five cents "for filing every paper not hereinbefore specified." We think it is plain that a clerk is entitled to a fee of five cents for filing each canceled county warrant.

In the case of State ex rel. V. Brown, 146 Mo. 1.c. 406, the court said:

"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. State ex rel. v. Wofford, 116 Mo. 230; Shed v. Railroad, 67 Mo. 687; Gannon v. Lafayette Co., 76 Mo. 675.

In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

In view of the above, it is the opinion of this office that the county clerk is not entitled to any fee for issuing county warrants or for cancelling same for the reason that the statute does not allow him any. The county court, under the provisions of Section 13183, supra, may allow the clerks such compensation as they deem just and reasonable for performing their duties, imposed under Article VIII, Chapter 85, which includes the issuing of warrants. For filing canceled county warrants, the county clerk is entitled under the provisions of Section 11781 to a fee of five cents for filing each canceled county warrant.

II.

You ask what fees you are entitled to for canceling and filing school warrants. We are unable to find any statute requiring you to cancel and file school warrants. Under the provisions of Section 9266, R. S. Mo. 1929, the county treasurer is made the custodian of all moneys for school purposes belonging to the different districts until paid out on warrants, duly issued by the order of the board of directors, to the treasurer of some town, city or consolidated district.

Under the provisions of Section 9267, R. S. Mo. 1929, the county or township treasurer is required to settle his accounts with the county court at its first and third regular terms each year and it is made the duty of the court to examine the vouchers, receipts, orders and warrants upon which any payments were made, and, if satisfied that such payments are correct, to make an order of record attesting same. Said section, however, does not require the county court or clerk to cancel said school warrants, or the clerk to file same in his office. Section 13146 specifically requires the court to cause the clerk to cancel county warrants and Section 13147 makes it the duty of the clerk to file all canceled county warrants.

Since the statute does not make it the duty of the county clerk to cancel and file school warrants and consequently allows no fee therefor, it is the opinion of this office that the county clerk is entitled to no fee for canceling and filing school warrants.

Yours very truly,

APPROVED:

J. E. TAYLOR
Assistant Attorney-General.

ROY McKITTRICK
Attorney-General.

JET/afj