

COUNTY BUDGET LAW: (1) An officer may/exceed amount estimated for office supplies; (2) Auditing of an account and allowing of same by county court does not constitute a judgment and does not entitle Clerk to a fee of 30¢ for entering same.

5-7

April 24, 1935.



Hon. Elliott M. Dampf,
Prosecuting Attorney,
Cole County,
Jefferson City, Mo.

Dear Sir:

This department is in receipt of your request for an opinion dated March 28, 1935, same being as follows:

"Would like an opinion regarding the Budget Law of the County in 'Laws of Missouri 1933'.

As an example, the County Clerk places the amount of \$500.00 for his office for supplies. Before the end of the year this amount was consumed and it became absolutely necessary that we have a record book. Would he be allowed to go over his budget to purchase same?

Would also appreciate an opinion as to what constitutes a judgment in a County Court, or when does the County Court act in a judiciary capacity? Would the allowing of an account by the County Court be considered a judgment?

Section 11781, R.S. 1929 states a fee for County Clerk as follows: 'For entering every judgment.....30¢'"

A County officer may not
exceed the amount estimated
for office supplies

In the Classification of Expenditures, under Section 2 of the County Budget Act, Class 4 provides as follows:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under Class six."

If the record book in question had been included in the original estimate of the county clerk, it would have come within the terms of this class.

Section 3 of the County Budget Act (Laws of Mo. 1933, p. 342) contains the provision, "also he shall submit an itemized statement of the supplies he will require for his office, separating those which are payable under Class 4 and 6." Section 8 of the County Budget Act (page 345) makes it the duty of the county court to go over and revise the estimate and amend the same in such a way as to promote efficiency and economy in county government. The county court also has the right to alter or change any estimate and give the officer the opportunity to be heard. It then becomes the duty of the county court to forthwith enter the estimate on the record of the county court and to approve the same.

The section above referred to does not contain any provision for changing or altering the budget to meet the condition such as you present after the estimate is on file and the copy is sent by registered mail to the State Auditor.

Section 6 of the County Budget Act (Laws of Mo. 1933 p. 344) contains the provision that "Not later than the 15th day of January of each year, every officer who expects to claim pay for services or to receive supplies to be paid for from county funds shall submit to the county clerk the information hereinafter specified". Section 7 sets forth the form to be executed by the officer, and contains this provision: "Each item of supplies shall be listed separately, giving quantity and estimated unit price."

As stated before, there is no provision in the County Budget Act for remedying an error made or for failure to properly estimate the amount of supplies needed. It is the duty of the county court to sacredly preserve the priority of the five classes, the purpose of the whole act being to promote efficiency and economy in county government. Such provision being absent, we are therefore of the opinion that the county clerk cannot exceed the amount estimated in his budget. This conclusion is further strengthened by the provision contained in Section 8 of the County Budget Act (page 346), which is as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

II.

The auditing of an account and allowing of the same by the county court does not constitute a judgment and would not entitle the County Clerk to a fee of 30¢ for the entering of same.

As to your question regarding what constitutes a judgment of the county court, we must consider what the Supreme Court has said on this subject. In the case of *Spindle v. Hyde*, 247 Mo. 32, the Court said (l.c. 52):

" * * * a judgment is but the conclusion in a syllogism having for its major and minor premises the issues raised by the pleadings and the proofs thereon. A judgment is the sentence of the law upon the record. * * * "

In the case of *Orchard v. Wright-Dalton-Bell Anchor Store Co.*, 225 Mo. 414, the Court said:

" * * * A 'judgment' is the decision

or sentence and law pronounced by a court or other competent tribunal on the matter contained in the record. It is the final consideration and determination of a court of competent jurisdiction on the matters submitted to it. It includes an order of the probate court on an administrator to pay over a sum of money, or to sell property belonging to the estate to pay debts."

And again, in the case of McManus v. Muench, 217 Mo. 124, the Court said: "A judgment is the sentence of the law upon the record; the application of the law to the facts and pleadings."

Sec. 11781, R.S. Mo. 1929, being the general section under which the county clerk is entitled to fees for his office says among other things, "for entering every judgment...\$.30." You desire to know whether or not the auditing and allowing of accounts constitutes a judgment such as would entitle a county clerk to a fee of \$.30. Section 12161, R.S. Mo. 1929 sets out the duty of the county clerk with reference to accounts, and is as follows:

"It shall be the duty of the clerk of the county court: First, to keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the amount he may have disbursed between the periods of his respective settlements with the court; second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom; third, to file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted in evidence in all courts of law and elsewhere; 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."

There is no provision in the above section for any fees for the county clerk in carrying out his duties under said section, nor does the general section, 11781, R.S. Mo. 1929 contain any provision for the payment of fees to the county clerk for carrying out his duties under Section 12161; therefore, as stated in your letter, the only method by which the county clerk might charge a fee insofar as accounts are concerned, is to treat the same as a judgment, which we will next consider.

In the case of Sanitary Company v. Laclede County, 307 Mo. 10, the Court, in discussing the function of the county court in auditing and allowing claims, said (l.c.16):

"Defendant apparently contends that Section 2589 has made such provision otherwise. The function of the county court is merely to audit and settle claims and demands against the county. (Section 2574) A claim against a county is not technically a suit at all. (Gammon v. Lafayette County, supra) If a claim is presented to the county court and allowed, well and good. If it is rejected, the claimant may appeal to the circuit court. There is no language in Section 2589 which may fairly be construed as constituting rejection of a demand against a county by the county court a final adjudication of defendant's right to recover against the county."

The same subject matter is treated in the case of State ex rel v. Diemer, 255 Mo. 336, wherein the Court said (l.c. 351):

"In the allowance of claims against a county or in settling with county officers, county courts do not act so strictly as a court, or in the performance of a judicial function, that their allowance or disallowance of a claim is res adjudicata. Something of substance might be said in favor of the contrary theory,

but at an early day this court considered our statutes and announced the doctrine, on the reason of the thing and because of a good public policy, that county courts in the allowance of claims, as in settling with officers, acted as a mere public board of audit, as ministerial, administrative or fiscal agents for the county and not strictly as a court, hence we have uniformly refused to apply the doctrine of res adjudicata to their orders allowing or disallowing claims against the county, or to their settlements with county officers. That doctrine has always been adhered to and must be accepted as settled."

One of the earlier cases on this subject is that of *Reppy v. Jefferson County*, 47 Mo. 66. In that case the Court said (l.c. 68):

"Defendant's counsel first contend that the rejection of the claim is a judgment; that the plaintiff is concluded by it, and cannot prosecute in the Circuit Court. This claim is wholly untenable. The County Court, in auditing claims against the county, is but its fiscal agent, and not a judicial body. It represents the county, and in the numerous prosecutions against it, from the earliest times, it has never been held that a rejected claim was res adjudicata. (*Phelps County v. Bishop*, 46 Mo. 68). The idea that a disallowance of a claim operated as a judgment against the claimant has arisen in part from the fact that an appeal is allowed from such action. This, however, is but a statutory mode of bringing the county into the Circuit Court without original process, and the claimant may avail himself of it or commence suit."

CONCLUSION

The decisions quoted above appear to be unanimous to the effect that the county court, in auditing and allowing an account, acts as a ministerial, administrative or fiscal agent for the county and not strictly as a court; hence, it is the opinion of this department that the auditing and allowing of an account by the county court does not constitute a judgment for which the clerk is entitled to a fee of \$.30.

Referring to the definitions as contained in the first part of this opinion in regard to judgments, it is our opinion that to constitute a judgment in the county court, it would be necessary that pleadings or petitions be filed in conformity with some statute, or an action be brought in the county court wherein it would become the duty of the county court to pass judgment on same. Then and in that event, the findings would constitute a judgment for which the clerk would be entitled to the fee of \$.30.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

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