

COUNTY CLERKS) Entitled to fees for certificates for States;
SALARIES AND FEES) must account for notarial fees.

January 4, 1935.



Hon. Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Englehart:

Sometime ago you requested an opinion of this office on various matters. Some of these problems were answered in an opinion of this office to Wm. Womack, dated December 26, 1934, a copy of which was on such date forwarded to you. We herewith render you an opinion on the following inquiry:

"Various provisions of section 11781 provide for fees for certifying an acknowledging various documents. Should the clerk be allowed the regular acknowledgment fee of \$.50 for every paper acknowledged for the county and which is certified to any department of the state government, and this fee shown as a part of fees earned and his salary is based on it. Additional fees are shown in the Abstract for the making of the order or for the copying of it in the court record. This is a \$.50 fee for placing the seal on the document.

Should the county clerk receive and have on hand receipts for fees surrendered to the treasury by the clerk, when there are acknowledgments made for private individuals?"

In reply to your first question we direct attention to Section 11781 R. S. Mo. 1929, which provides in part:

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

Various statutory provisions require the County Clerk to acknowledge for the County and certify various papers, documents and proceedings to various state and county officers and departments. The only compensation received by the Clerk is from fees provided by law. Most of his duties are duties performed for and on behalf of the county and the state. It is not reasonable or logical that he should be expected to perform these services without fees or compensation when this section particularly specifies that he shall receive fifty cents for each certificate and seal. Without question he is entitled to compensation for services rendered to state and county for which he is required to make account. Callaway County vs. Henderson, 139 Mo. 510, l. c. 520:

"* * *The duty is imposed upon the clerk to include in his return 'all fees for all services of whatever character done in his official capacity' and upon these the court acts. The fees contemplated by the law includes the compensation allowed by law for all services rendered. Callaway Co. v. Henderson, 119 Mo. 38.

When the clerk makes the returns required by the statute, then the court is given power to pass upon them, that is, to pass upon the items included in the reports. The law imposes a duty upon the clerk as well as the court. He is required to make a return of all amounts received as clerk as well for services rendered the State and county, as for services purely notarial."

Of course, if a particular statute provides that the certificate therein named should be made by the County Clerk without compensation or fee, such certificate could not be charged for.

CONCLUSION.

It is therefore the opinion of this office that absent specific statutory provisions the County Clerk is entitled to fifty cents for each certificate and seal made, whether it is made for the State or County or for an individual.

In respect to your second inquiry, we believe that the quoted portion of the case of Callaway County vs. Henderson supra, answers this inquiry. In that decision the Court stated:

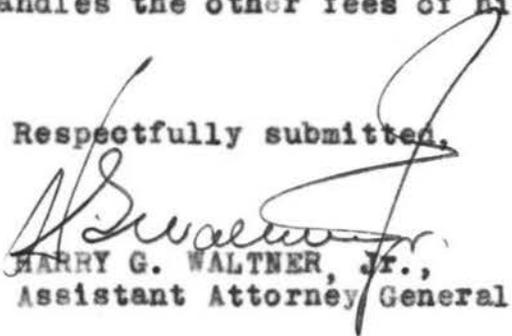
"He is required to make a return of all amounts received as clerk as well for services rendered the State and county, as for services purely notarial."

AS the foregoing fees are fees which must be accounted for they should be surrendered to the Treasurer by the Clerk and receipt therefore taken in the same manner as any other fees.

CONCLUSION.

It is therefore the opinion of this office that the County Clerk should receive and treat fees for acknowledgments made for individuals in the same manner as he handles the other fees of his office.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

HGW:MM