

CIRCUIT CLERKS -

Retain only fees taxed as circuit clerk costs; to retain fees earned after January 1, 1935; liability of county for circuit clerk fees; county treasurer shall report to circuit clerk only such fees as are for services of circuit clerk.

May 7th, 1935

5-10



Honorable Elbert L. Ford
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

We have your request for an opinion which is as follows:

"There has been some controversy in regards to what fees the Circuit Clerks are entitled to since the enactment of this new law.

"I would appreciate it if you would render me an opinion at your earliest convenience as to construction of Section 11786 about 'the aggregate amount of fees that any Clerk of the Circuit Court, etc;' as to the following:

"1 - Does the Circuit Clerk retain only the Circuit Clerk fees he collects or does it include all fees, including jury and stenographer fees in civil cases?

"2 - Can the Clerk retain the fees in civil cases which he collects in old cases where the fees accrued in same prior to January 1, 1935 or do these fees go into the County Treasury?

"3 - Is the County liable for Clerk fees in criminal cases that are terminated after January 1, 1935?

"4- All fees accrued in criminal cases are paid to and through the County Treasurer's

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office. Since the enactment of this new law, who shall the Treasurer report the fees in such cases?

A - To the County Clerk as under old law

or

B - To the Circuit Court Clerk and if to the Circuit Clerk's office what fees does the Treasurer report to the Circuit Clerk?

"Our Circuit Clerk interprets this law and your opinion of the above date as permitting him to retain the jury and stenographer fees and all fees which he collects even though they accrued prior to January 1, 1935. My opinion is adverse to his on these matters and I have so stated. This is rather important to the Counties and Circuit Clerks in this State as to what fees the Circuit Clerk may retain. I would appreciate you rendering this opinion at your earliest convenience."

We shall attempt to answer your inquiry in the order outlined by you.

I.

The circuit clerk retains only such fees as are compensation to the circuit clerk.

As to the nature and character of fees which the circuit clerk is entitled to retain, we call your attention to that portion of Section 11786, Laws Mo. 1933, p. 369 which reads in part as follows:

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3

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of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. * * "

Thus, from the above statute, it clearly appears that the circuit clerk is entitled to retain fees for his services. If fees are taxed as costs for other purposes, then such fees are not compensation for the circuit clerk. Witness fees are taxed as costs in cases, but they are taxed as compensation for the witnesses, and the circuit clerk would not under any circumstances be permitted to retain as fees for his services witness fees taxed as now provided by law.

It is true that under the provisions of Section 8774 R. S. Mo. 1929 that there is taxed against the losing party and collected as costs the sum of twelve dollars (\$12.00) as jury fees which, as the statute provides:

" * when collected, shall be paid into the county treasury to the credit of the county revenue fund; * * "

Also, under the provisions of Section 11724, there is a fee of three dollars (\$3.00) taxed in each circuit court case as a stenographer fee for the court reporter, but this fee under the statute is to be collected as other costs and paid by the clerk into the county treasury for the purpose of reimbursing the county for compensation allowed the court reporter.

It is, therefore, the opinion of this office that the circuit clerk can retain only such fees as are taxed as costs for services of the circuit clerk, and is without authority to retain any fees taxed as costs for the jury or court reporter.

II.

The clerk may retain only such fees in civil cases which are earned by the clerk subsequent to January 1, 1935.

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Prior to the first Monday in January, 1935, the circuit clerk was paid a salary under the provisions of Section 11786 and Section 11813, R. S. Mo. 1929. The clerks taking office on the first Monday in January, 1935 receive compensation for their services under the provisions of Section 11786, Laws Mo. 1933, p. 369.

Prior to the first Monday in January, 1935, all fees earned by the circuit clerk belonged to the county. When such fees were earned the title to same at once vested in the county, regardless of when they were actually collected. However, the 1933 Legislature amended Section 11814, Laws Mo. 1933, p. 372, and required the circuit clerks to pay all fees in excess of those permitted to be retained by them, into the county treasury. Fees that are taxed as costs, for the services of the circuit clerk, after the first Monday in January, 1935 belong to the circuit clerk when earned. Thus, fees of the circuit clerk earned in the year 1935 belong to the circuit clerk regardless of whether they were collected in 1935 or in 1936.

This precise question was raised in *Harrington v. City of St. Louis* (1891), 107 Mo. 327, wherein the court commented upon this phase of the matter, l.c. 330:

"The law itself divides the official term into years for all the purposes of applying the limitation as to the amount of fees which the sheriff may retain. Each year of the official term stands by itself. It follows that the sheriff must render a separate account of receipts and expenses for each year. When the fees for the particular year reach the amount of \$10,000, with expenses added, the balance must be paid over to the city. The excess of one year cannot be carried into another year for the purpose of bringing the fees of that year up to \$10,000, with deputy hire added. It is not the object of this law to make the clear compensation of the sheriff \$10,000, per annum. His compensation for each year must come from the fees and emoluments of the office for that year, *

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"With this result it is proper to be more explicit as to what fees must be brought into each year's account. For illustration we will take the first year of the first term in this case. The receipts for that year will be composed of the fees and emoluments earned and collected during that year, and, also, of the fees and emoluments earned during the year, but collected during a subsequent year. In other words, the fees of a particular year are those earned during that year, no matter when collected. It often occurs that fees and commissions are earned in one year and collected in a succeeding year. All such fees and commissions must be carried into the account of the year in which they were earned."

I am enclosing a copy of an opinion under date of February 8, 1935 written by James L. HornBostel of this office, which, among other things, holds that the circuit clerks are entitled to retain only the fees earned each year regardless of when the fees are collected. That is still the opinion of this office.

III.

Counties not liable to the circuit clerk for payment of fees chargeable to the county.

Under the provisions of Section 3827, R. S. Mo. 1929, when a defendant in a criminal case is sentenced to pay a fine or to the county jail, the county becomes liable for the costs incurred on the part of the State. Under Section 3828, R.S. Mo. 1929, if a defendant is acquitted in a criminal case wherein the sole punishment is not by imprisonment in the penitentiary, then the county becomes liable for all the costs in the case, except where the prosecutor is required by law to pay the costs.

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Under the provisions of Section 3830, the liability of the county to pay costs is as follows:

"When such prosecutions are commenced by a public officer whose duty it is to institute the same, and the defendant is acquitted, the county shall pay the costs; if he is convicted, and unable to pay the costs the county shall pay all the costs, except such as were incurred on the part of the defendant."

The 1933 Legislature, Section 11814, Laws No. 1933, p. 372, relieved the county of its liability for payment of such fees due the circuit clerk under cost bills otherwise paid by the county. A copy of an opinion written under date of February 8, 1935 by Mr. James L. HornBostel of this office, fully covering this matter, is enclosed herewith.

IV.

The county treasurer shall report to the circuit clerk only such fees as are paid to the county treasurer for the services of the circuit clerk.

As pointed out above, under Point I of this opinion, the circuit clerk is entitled to retain only fees earned by the circuit clerk, and is not entitled to retain jury or stenographer fees taxed as costs in cases. The county treasurer should report to the circuit clerk all fees of the circuit clerk which are paid to the county treasurer.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK

Attorney General

FER:PL