

COSTS IN CRIMINAL CASES: County Treasurer cannot withhold fees payable to county judges and county clerk, indebted to county on school fund mortgages, because school fund mortgages are not included in provisions of Sec. 3854, R.S. 1929.

10-17  
October 17, 1935.



Honorable L.G. Graven,  
Treasurer of Lincoln County,  
Troy, Missouri.

Dear Sir:

This department is in receipt of your letter requesting an opinion as to the following state of facts:

"My attention has been called to the sections of law as shown herewith. (Secs. 3854, 3853 to 3858, R.S. Mo. 1929)

"I do not thoroughly understand this and would like to have your written opinion, as I cannot get any satisfaction from talking with our prosecuting attorney.

"The county clerk and one of the county judges owes the county on school fund mortgages and I want to know if under the law I will have to hold their fees and salary to apply on their respective debts."

Section 3854, R.S. Mo. 1929 provides in part as follows:

"The county treasurers shall pay out all such fees to the proper owners as the same may be called for: Provided, that before any such fees shall be paid the party to whom the same is due shall furnish satisfactory evidence to the treasurer that he or she, as the case may be, is not at the time indebted to the

state or county, on account of delinquent back taxes, or is indebted to the state or county on account of any fine, penalty, forfeitures or forfeited recognizances, or costs for a violation of any criminal statute of this state, or for contempt of any court, no matter if the same shall have been paid by oath of insolvency as provided by law; or is indebted to the state or any county on account of any funds coming to his hands by reason of any public office: \* \* \* \*"

CONCLUSION

In view of the foregoing, it is the opinion of this department that you have no authority to hold the fees payable to the county judge in question or to the county clerk for the reason that they are indebted to the county on school fund mortgages inasmuch as school fund mortgages are not included within the provisions of Section 3854, R.S. No. 1929.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.