

CIRCUIT CLERK:

Circuit Clerk not entitled to retain change of venue fees prior to first Monday in January, 1935.

Circuit Clerk is allowed to retain change of venue fees, in addition to other fees allowed him under Section 11786 Laws of 1933.

4-3
April 1, 1935



Mr. Charles S. Huckstep
Deputy Circuit Clerk
Lincoln County
Troy, Missouri

Dear Sir:

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

"I am writing you relative to fees in the Circuit Clerk's office, those made from the change of venue cases, clerk's fees. When I came into this office in 1927, I wrote to the attorney general of the State as to fees accruing from C. of V. cases, and asked him if the clerk's had a right to the clerk's fees or not. He advised me that the several clerks of the State had a right to take the fees as it was extra work, and of course having his statement of this, I used them feeling I was doing right. Then again when the new Attorney General came in, Mr. Gentry, I also asked his advice regarding these fees and he said he deemed them due the several clerks on account of the extra work, and from his statement also I keep the change of venue fees of the Clerk. Now since the auditors have been here they inform me that you have ruled they have no right to keep them. I would just like to ask you this, where am I now regarding these fees. If I had not been advised it was all right and they

April 1, 1935

were due me, I would have turned them into the County Treasurer, but feeling I was doing the right thing, I kept them. Now what am I to do. I have had so much bad luck in the past two years and losing my wife last October, sure has hit me hard, and now to go back and dig this amount up for the past 8 years, sure will be a hard blow on me. Advise me if you please what I can do, and who can I depend upon to have things right from now on for Mr. Hardesty, who is the Clerk now, and I am his deputy. I shall await your advice. I will add that the attorneys advised that these fees were due me too, and that all the clerks ahead of me kept the C. of V. fees. With best wishes to you, I am."

This office, in an opinion given to Honorable Forrest Smith, State Auditor, Jefferson City, Missouri, under date of (February 28, 1933), ruled that a circuit clerk, prior to the first Monday in January 1935, was not entitled to retain, in addition to the salary allowed him under the provisions of Section 11786 R. S. Mo. 1929, fees earned in cases of change of venue from other counties. Said opinion was signed (by Carl C. Abington, Assistant Attorney General and approved by Attorney General Roy McKittrick.) A copy of said opinion is inclosed for your information.

Prior to the first Monday in January, the circuit clerk was paid a salary for his services, under the provisions of Sections 11786 and 11813, R. S. Mo. 1929. Said sections have been repealed and superseded by Section 11786 Laws of Missouri 1933, which reads in part as follows:

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount herein-after set out; * * * * * provided, further, that clerks of the Circuit Court shall be allowed to retain

in addition to the fees allowed under this section, all fees earned by them in cases of change of venue from other counties; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

The above section is plain and unambiguous and provides that a circuit clerk is allowed to retain, as compensation for one year's service, the fees earned by him during said year, not to exceed the amount specified in said section. In addition thereto, he is allowed to retain all fees earned by him in cases of change of venue from other counties. In view of the above it is the opinion of this office that a circuit clerk is allowed to retain, for one year's services, the fees earned by him during said year, not to exceed the amount specified in Section 11786 Laws of Missouri 1933, and, in addition thereto, he is allowed to retain all fees earned by him in cases of change of venue from other counties.

You mention in your letter how hard it would be for you to pay back the change of venue fees retained by you for the past eight years. For your information we call your attention to the statute of limitations applicable to your case, same being Section 863 R. S. Mo. 1929, which reads as follows:

"Within three years: First, an action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money, collected upon an execution or otherwise; second, an action upon a statute for a penalty or forfeiture, where the action is

Mr. Charles S. Huckstep

-4-

April 1, 1935

given to the party aggrieved, or to
such party and the state."

In view of the above, it is the opinion of this office that an action to recover change of venue fees retained by you more than three years before the commencement of an action to recover same, would be barred by the above statute of limitations.

Yours very truly,

James L. HornBostel
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

JLH/JET:LC