FEES - COUNTY CLERK: Not entitled to any fee for signing school bonds.

8-31

August 29, 1935.

Mr. A. Lee Jenkins,
County Clerk, Daviess County,
Gallatin, Missouri.

Dear Sir :

We acknowledge receipt of your inquiry which is as follows:

> "We are writein you for an opinion in reguard to County Clerk. Chargeing for singing Bonds, for School Dis,t. We have two School Districts Refinancing their bonds, which has to be signed and sealed by the County Clerk of their respt, Countyes.
>
> "Has the County Clerk a right to charge fifty cents for each Bond so signed, and sealed, or can he make any charge for such service and if so how much.
>
> "Thanking you in advance for your opinion."

Replying thereto, Section 9200, Laws 1931, page 349, is as follows:

> "The board of directors of any school district, organized under any general or special law of this state, is hereby authorized to issue funding and refunding bonds for the district, to be exchanged for outstanding bonds of the district, or sold for the purpose of

meeting and paying any matured or maturing bonded indebtedness thereof. Each bond shall be of the denomination of not more than one thousand and not less than one hundred dollars, and shall bear interest not to exceed six per cent. per annum, and such interest shall be payable semi-annually, and to this end each bond shall have semi-annual coupons attached thereto and be made payable to bearer: Provided, that no bonds issued under this section shall be payable in more than twenty years from the date thereof, and shall be payable, principal and interest, in the city of St. Louis or the city of New York, at the option of the board of directors, or as may be agreed upon by such board of directors and the purchaser of such bonds. Such board of directors shall be empowered to prepare and issue from time to time such number of renewal bonds as may be necessary for the objects and purposes of this law, and each bond shall be signed by the president, countersigned by the secretary or clerk, and authenticated by the seal of such board of directors, if there be one; and shall also be attested by the clerk of the county court of the county in which such district is located, and he shall put the seal of said court on each of said bonds. The secretary or clerk of the board of directors shall keep a record in the books of the school district of all the renewal bonds that may be issued by the board of directors under the provisions of this chapter, noting the date when issued and when due, and also the number and amount of each bond so issued, and shall also keep a full record of all transactions that may be necessary for the identification of such bonds."

We assume this is the section you refer to as requiring you in your official capacity to perform certain acts.

Compensation to the county clerk for his official services performed is allowed only where there is statutory provision for the payment thereof. If there is no statute providing for his compensation, he is not entitled to compensation, notwithstanding the law may make it his official duty to perform certain services.

In the case of State ex rel. Troll v. Brown, 146 Mo. 401, l. c. 406, the Supreme Court of this state says:

> "It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

In the case of State ex rel. v. Gordon, 245 Mo. 12, l. c. 27, the Supreme Court of this state declares as follows:

> "Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.
>
> "Throop on Public Officers (Sec. 443) says: 'It has been often held, that an officer's right to his compensation does not grow out of a contract between him and the State. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract but because the law attaches it to the office.'

"Mechem on Public Offices and Officers says: 'Sec. 856. Unless, therefore, compensation is by law attached to the office, none can be recovered. A person who accepts an office to which no compensation is attached is presumed to undertake to serve gratuitously, and he cannot recover anything upon the ground of an implied contract to pay what the service is worth,' * * *

"In Bank v. Refrigerating Co., 236 Mo. 414, Brown, J., speaking for the court says: 'When the law requires a specific service to be performed by a public officer, he must perform that service regardless of whether any provision has been made to pay him for same.'

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says : 'It seems the general rule in this country, as announced by the decisions and textwriters, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further, it seems well settled that if the statute provides compensation in a particular mode or manner, then the officer is confined to that manner, and is entitled to no other or further compensation, or to any different mode of securing the same.' * * *

And at page 29 the Court said:

"As the Legislature may fix such compensation to a public office as it sees fit, or none at all, we can see no constitutional objection to its attaching such conditions as it deems proper to the payment of the compensation, such conditions to be binding upon any one who thereafter

> enters upon such office and performs its duties. As stated above, the compensation has no relation to the amount or value of the service. There can be no application of the doctrine of quantum meruit. The officer takes the office cum onere. Having accepted it with the conditions imposed by the Legislature, upon whose will he must depend for any compensation at all, he cannot afterwards challenge the power of the Legislature to impose such conditions. * * *"

In the case of King v. Riverland Levee District, 279 S. W. 195, the Court said, l. c. 196:

> "It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. * * * * * Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Medeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same."

CONCLUSION

Bearing in mind that officers are only entitled to fees where the statute so provides and that statutes relating thereto must be strictly construed, and finding no statute authorizing the payment of any fee to the county clerk for so signing the bonds you inquire of, it is our opinion that no fee therefor can be legally charged or collected.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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