

COUNTY CLERKS - Construction of Section 12183, R. S. Mo. 1929.

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November 29, 1935

Honorable C. W. Piper  
Clerk of the County Court  
Saline County  
Marshall, Missouri



Dear Sir:

We have your request of November 25, 1935 for an opinion, which request is as follows:

"Recently we find that we have been for many years collecting fees to run the Clerk's office, that are not legal.

"Our court has allowed 50¢ each for writing warrants, 50¢ each for opening and closing court and \$200.00 per year for keeping a record of Court proceedings. This loss is about \$1,800.00 per year. We have been allowed only \$860.00 per year for keeping the Treasurer's and other books. Now it will be necessary to get a Court order allowing about \$2,600.00 per year for these books to get the necessary fees to run our office.

"Can you approve of our Court making an order allowing the clerk \$2,600.00 per year for keeping these books, payable monthly, under Section 12183?

"We only ask for enough to pay the salary of \$2,500.00 and clerk hire of \$2,400.00 amounting to \$4,900.00, which is less than this office has been paying for a number of years."

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Your opinion only calls for a construction of Section 12183, R. S. Mo. 1929. That section is as follows:

"The court shall allow to the clerk of the county court, for his services under this article (except sections 12145, 12146 and 12147,) such compensation as may be deemed just and reasonable."

This section is a part of Article 8, Chapter 85, R. S. Mo. 1929.

Under the above statute (Sec. 12183), the county court is vested with a limited power, and the statute must be given a reasonable, as distinguished from an arbitrary, construction by the county court. It is necessary to ascertain what the Legislature meant by the term "compensation as may be deemed just and reasonable".

Webster's dictionary defines "just" as:

"Violating no right or obligation; giving to every man his due,"

and the same author defines "reasonable" as:

"Governed by reason; agreeable to reason; just."

In fixing such compensation as may be allowed the county clerk under this section, the county court should keep in mind the two parties to the contract; the taxpayers on the one hand, and the county clerk on the other. The amount of compensation is to be fixed by the county court, and is to be based upon the amount of services rendered, and the value of those services to the public.

Under the statute authorizing this office to give opinions, Sec. 11274, R. S. Mo. 1929, such opinions must necessarily be limited to "questions of law". This

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general rule is also set out in 6 C. J., p. 811, Section 16. The amount of compensation to be allowed under the above statute is a matter that rests exclusively with the county court; the amount of pay should be a reasonable compensation for the services rendered; no more, no less.

It is, therefore, the opinion of this office that the term "just and reasonable", as contained in Section 12133, R. S. Mo. 1929, calls for the payment of a reasonable compensation for the services rendered, and the county court should neither pay less than the value of the services, nor more than the value of the services rendered.

Yours very truly,

FRANKLIN E. REAGAN  
Assistant Attorney General

APPROVED:

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

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