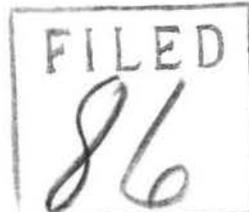


FEES: Change of venue deposits to circuit judge in district
are considered in fixing probate judge fees.

6-27
June 27, 1935.



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your inquiry which is as follows:

"Section 11782 provides certain fees that the Judges of the Probate Courts of Missouri may be entitled to retain for their services.

I would like an opinion from your department as to whether the fees received by the Circuit Judge from change of venue cases should be used in ascertaining the amount of fees the Probate Judge can legally retain, and if so, should the change of venue fees for the entire circuit be used or only the change of venue fees arising from the particular county where the Probate Judge is located.

Section 11782 R. S. Missouri 1929, with respect to fixing the amount of fees for services for judges of probate courts in Missouri, provides in part as follows:

"Provided further, that whenever, after deducting all reasonable and necessary expenses for clerk hire, the amount of fees collected in any one calendar year by or for any one probate judge in any county in this state, during his term of

office, and irrespective of the date of accrual of such fees, shall exceed a sum equal to the annual compensation in the aggregate from all sources and for all duties by virtue of the office, except the \$1200.00 allowed for expenses when holding circuit court in other counties, provided by law for a judge of the circuit court having jurisdiction in such county, then it shall be the duty of such probate judge to pay such excess less ten per cent thereof, within thirty days after the expiration of such year, into the treasury of the county in which such probate judge holds office, for the benefit of the school fund of such county."

It will be noted that the statute contemplates that all reasonable and necessary expenses for clerk hire shall be exempted and not considered for the purpose of determining the amount of fees the probate judge is allowed. Likewise, it is observed that the statute contemplates the fees that are actually collected within the given calendar year and not what fees accrued. The answer to your inquiry turns on the meaning of the words "annual compensation in the aggregate from all sources and for all duties by virtue of the office", except the \$1200.00 and except the ten per cent provision.

If any fees in a given calendar year in excess of the above stated rule are collected after the term expires, they are likewise treated.

Section 922, R. S. Missouri 1929, in change of venue cases requires the litigant applying for the change to deposit ten dollars with the clerk of the court when he files his application.

Section 923 of said revision provides that "after a trial had or upon final disposition of such cause in said court" the clerk "shall pay said sum to the judge."

Section 923 aforesaid has an express proviso that said deposits received by the clerk of the circuit court of the city of St. Louis under these two sections shall be paid by him into the city treasury and used for the "payment of the salaries of the circuit judges and court stenographers of the said city."

In the case of *Cunningham v. Current River Ry. Co.*, 165 Missouri 270, the court had under consideration this statute providing for the payment of a ten dollar deposit to the circuit judge and it was there contended that the provision was void and unconstitutional because it increased the salary of the circuit judge contrary to the constitutional provision. In that case the court held that the statute was constitutional and did not violate the provision thereof against increasing salaries but defined it to be "compensation" for extra labor. At page 277 the court uses this language:

"The ten dollars whose payment is required to be made on the presentation of an application for a change of venue from the circuit where the cause is at the time pending, is not intended and is in fact in no sense an increase in the salary of the judge to whom it is to be paid, but compensation for extra labor imposed upon him by the person on whose application the venue is changed by reason of the cause being sent to him from another circuit.

"The compensation mentioned in the Constitution means compensation paid by the State, or some subdivision thereof, in the way of an increase of salary or compensation, which can not be increased by legislation during the period for which the judge is elected, but does not mean that he may not be paid for extra services and expenses incurred in the performance thereof, even out of the State treasury."

See also the case of *State ex rel vs. Gass*, 317 Mo. 744 and *Emmons vs. Farmer*, 196 S. W. 1106, 271 Mo. 306.

The salary of the circuit judge is dependent on and is paid by reason of his official position as circuit judge of the district and not because he is the circuit judge in one county or other counties, the unit used being the judicial district and not the county. He receives the change of venue deposits or fees for cases sent into his district, and the district is the territory to be considered in determining how much money he receives for change of venue deposits.

June 27, 1935

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Hon. Forrest Smith.

You do not state whether your inquiry refers to the compensation relative to the circuit judges within the City of St. Louis or out over the state. We are making these observations with respect to the salaries and compensation of circuit judges outside of the city of St. Louis.

With respect to the question being considered, all the money received by the judge within the calendar year from any source and which he would not have received if he had not been such circuit judge, except the \$1200.00 and the reasonable and necessary expenses for clerk hire, should be considered and computed.

It will be observed that the statute here considered uses a most comprehensive expression and does not say "salary" which is used in the constitutional provision, but instead uses the term "compensation" and says that the compensation includes the aggregate from all sources and "for all duties by virtue of the office."

CONCLUSION

We are of the opinion that the deposits made by applicants in change of venue cases and received by a circuit judge within the judicial district of which he is the judge are to be taken into consideration in determining his "annual compensation in the aggregate from all sources and for all duties by virtue of the office", for the purpose of determining the compensation of the Probate Judge.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
Acting Attorney General

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