

CIRCUIT CLERKS FEES - For order opening or closing court.

9-17
September 13, 1935

Honorable Guy M. Sone
Circuit Clerk
Cole County
Jefferson City, Missouri



Dear Sir:

We have your request of September 9, 1935 for an opinion, which request is as follows:

"On each day of Court I carry an order of the Circuit Judge ordering the opening of Court and also one for closing Court.

"Will you kindly advise as to whether or not the Circuit Clerk is entitled to collect from the county the usual 50¢ for each order of the Court?"

In answering your inquiry, we call your attention to pertinent parts of some of the statutes involved:

Section 1832, R. S. Mo. 1929:

"Full entries of the orders and proceedings of all courts of record of each day shall be read in open court on the morning of the succeeding day, * * "

Section 11785, R. S. Mo. 1929 in part provides:

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"The clerks of the several circuit courts of this state * shall receive in all civil proceedings the following fees for their services:

* * * * *

"For all orders not herein provided for \$.30 "

Section 1940, R. S. Mo. 1929:

"All expenditures accruing in the circuit courts, * shall be paid out of the treasury of the county in which the court is held, in the same manner as other demands."

Thus, from the above, it appears that the clerk must enter daily all records of the court, and keep a record thereof, and for such orders a specified fee is allowed, which is taxed against the county.

The necessity for an order opening court is shown by the provisions of Section 1849, R. S. Mo. 1929, which provides that if any court shall not be held on the first day of any term, such court shall stand adjourned from day to day, until the third day, at which time, under Section 1850, it shall be the duty of the sheriff to adjourn the court to the next regular term or to such special or adjourned term as the judge shall direct. Thus, an order opening court is essential at the beginning of the term. Since courts are not in session during term time for the entire day, it would appear to be proper for the court to fix by order the opening and closing of each day of court.

Although the above statutes do not specifically require an order opening and closing court,

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it is very clear that the opening and closing of court is a matter within the control of the circuit judge, and is necessary for the transaction of court business, and the authority of the circuit judge to make such orders for the opening and closing of court each day may be implied from the general powers and duties imposed upon a circuit judge. That which is implied in a statute is as much a part of it as what is expressed. State v. Riedel, 46 S. W. (2d) 131.

It is, therefore, the opinion of this office that the circuit clerk is entitled to a fee of thirty cents (30¢) for entering an order opening or closing a daily session of circuit court, and that such liability for the payment of such fee is placed upon the county.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

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

PER:PE