

CIRCUIT CLERK: Circuit Clerk is not entitled to retain fees earned under the provisions of Section 916, R. S. Mo. 1929, in addition to the maximum amount of fees allowed him under Section 11786, Laws of Mo. 1933.

1-29
January 24, 1935.



Hon. O. O. Wyrick
Clerk of the Circuit Court
and
Ex-Officio Recorder
Miller County
Tuscumbia, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of January 10th, 1935, requesting an opinion which reads as follows:

"Under Section 916 of the Revised Statutes of Missouri the party applying for a change of venue must pay all costs and expenses attending the change of venue and the said expense shall not be taxed as costs. The Clerk in making up the transcript would collect his fee for this service. Since the fee is not to be taxed as costs would the Clerk have to account for such fee or would he be allowed to retain this fee in addition to the maximum amount of fees allowed to be retained by law?

"I would appreciate an early opinion on this matter."

Section 916, R. S. Mo., 1929, provides:

"All the costs and expenses attending any such change of venue, made on the application of either party, shall be taxed against and paid by the petitioner, and shall not be

taxed in the costs of the suit; Provided, however, that when the change of venue is sought on the grounds of the prejudice of the inhabitants of the county, and the application is controverted by the opposing party, the costs incurred by the opposing party in hearing and determining said application shall be taxed against and paid by the losing party to said application."

Section 11786, Laws of Missouri, 1933, page 369, 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 hereinafter 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."

Section 11814, Laws of Missouri, 1933, page 372, provides in part:

"It shall be the duty of the clerks of all courts of record to charge and collect, in all cases, every fee accruing to their offices under the provisions of sections 11785, 11787, and 11788, or of any other statute, except such fees as are chargeable to the county, and if such fees be not paid when due by the party liable for the payment, it shall be the duty of the clerk to forthwith issue a fee bill for same

and place such fee bill in the hands of the sheriff of the proper county who shall forthwith levy same on the persons liable therefor, or their sureties, as authorized and provided by section 11776. **** And quarterly such clerk shall pay into the county treasury the amount of any fees collected in excess of the sums permitted to be retained for services and pay of deputies and assistants, and every clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law. It shall be the duty of the county court to examine such quarterly report and to require of the prosecuting attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, and, to that end, such prosecuting attorney shall have authority, at any time, to direct the issuance of any execution or fee bill for costs in any case in which any costs accruing to the county are unpaid."

Under the provisions of Section 11786, supra, Circuit Clerks are allowed to retain fees not to exceed the amount specified therein and in addition thereto all fees earned by them in cases of change of venue from other counties. Under the provisions of Section 11814, supra, it is made the duty of the Clerks of Courts of Record to charge and collect in all cases every fee allowed to their offices under the provisions of Sections 11785, 11786 and 11788, or of any other statute, except such fees as are chargeable to the county, and it is made the further duty of said clerks to pay into the county treasury the amount of any fees allowed in excess of the sums permitted to be retained.

In our opinion, the fees of the Circuit Clerk for making a transcript of record and proceedings in a case where a change of venue had been awarded are fees accruing to his office. The fact that fees are taxed against the petitioner and not as costs of the suit, is immaterial. We

Hon. O. O. Myrick

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are therefore of the opinion that a Clerk of the Circuit Court is not allowed to retain fees earned by him under the provisions of Section 916, supra, in addition to the maximum amount of fees allowed to be retained under the provisions of Section 11786, Laws of Missouri, 1933, page 369.

Yours very truly,

JAMES L. HORNOSTEL
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

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