

CIRCUIT CLERKS - Cannot retain fees allowed in excess of
the amount as contained in Section 11786,
Laws Mo. 1933.

2-6

January 31, 1936



Honorable Lee Barham
Circuit Clerk
Stoddard County
Bloomfield, Missouri

Dear Sir:

This department is in receipt of your letter of January 20, 1936 relating to certain fees of your office. Your letter is as follows:

"At your earliest convenience I would like to have your opinion and the law, on the accounting of the fees earned by and due the Circuit Clerk, in Drainage District and Levee tax suits, filed since October, 1935.

"Does the Circuit Clerk have to account for fees earned in such suits filed in the Circuit Court?"

In 1933, the Legislature, Laws Mo. 1933, p. 369, repealed and re-enacted Section 11786. The pertinent part of the new section relating to the salary of circuit clerks in counties of your population is herewith quoted:

" * in counties having a population of 25,000 and less than 30,000 persons, the sum of \$2300.00; in counties having a population of 30,000 and less than 70,000 persons, the sum of \$2500.00; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3000.00; provided, that in any county wherein the clerk of the Circuit Court is ex-officio recorder of deeds, said offices shall be

considered as one for the purpose of this section; 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."

The Legislature also repealed and re-enacted Section 11814, R. S. Mo. 1929 relating to the collection of fees and reports of the circuit clerk, said section being as follows:

"It shall be the duty of the clerk of the circuit court to charge and collect for the county, in all cases, every fee accruing to his office and to which he may be entitled 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 same, 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 property of the persons liable therefor, or their sureties, as authorized and provided by section 11776. Such clerk shall, at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month, stating the title of the case or on what account such fees were charged, together with the names of the persons paying or who are liable for same, with the names of all sureties, where security for costs has been required, and which report shall also show which of such fees have been paid and the total amount thereof, and what fee bills, if any, have been issued and for what fees and when placed in the hands of the sheriff for collection, and further stating that, after due diligence,

he has been unable to collect the fees reported unpaid, and which said report shall be verified by the affidavit of such clerk. It shall be the duty of the circuit clerk, upon the filing of said report, to forthwith pay over to the county treasurer all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipts therefor, one of which shall be filed with the county clerk, and every circuit clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided. It shall be the duty of the county court to examine said monthly report of the circuit clerk and to require 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."

We assume that you have in mind Section 10878, R. S. Mo. 1929, which is as follows:

"That it is understood that the ordinary fee statute does not apply to services rendered by any county or township officer or witness in the organization, incorporation or administration of any drainage or levee districts heretofore organized, in process of organization at the time of passage of this article, or that hereafter may be organized under any general or special law of Missouri permitting the organization of drainage or levee districts, but that such officer or witness, except as is otherwise provided for in the subsequent sections of this article, shall receive only a reasonable compensation to be fixed by the courts for services actually rendered, that petitioners for formation or incorporation of drainage and levee districts

and the officers of such districts after the same have been organized may prepare, write or print all copies of petitions, writs, orders and decrees of courts and other papers pertaining to such districts and furnish the same to the county and circuit clerks or other officers for their use, and in such event such officer shall be entitled to only a reasonable compensation for services actually rendered the districts in issuing such writs and copies of decrees, orders or other papers."

The section pertaining to the fees of circuit clerks with reference to drains and levees is Section 10879, R. S. Mo. 1929, which is as follows:

"The county and circuit clerks, except as limited in section 10878 and otherwise specified in statutes governing the organization and administration of drainage and levee districts, shall receive (in addition to the fees and deputy hire allowed under the provisions of section 11811, R. S. 1929), for filing each paper relating to a drainage or levee district, five cents; for issuing each subpoena, summons or notice, and for approving and filing each bond, twenty-five cents; for recording or copying each one hundred words and numbers, eight cents, any number consisting of more than three figures to be considered as two numbers. The fees of the sheriffs and witnesses shall be the same as allowed in section 10878 of this article."

We further assume that the question arises as to what interpretation is to be placed upon the phrase, "in addition to the fees and deputy hire allowed under the provisions of section 11811, R. S. 1929". In other words, when the Legislature re-enacted Sections 11786 and 11814, - are the fees as provided in Section 10879, to be included in the aggregate amount to be retained by the circuit clerk as a salary, or are said fees to be in addition to the aggregate amount?

Section 10879, R. S. Mo. 1929 has been on our statute books for a number of years. Hence, when the Legislature re-enacted Sections 11786 and 11814, we have the question of the later statute taking precedence over the old statute.

In the case of State v. Ebbs, 89 Mo. App. l.c. 98, the court, in construing the statute, said:

"The general purpose and object of a statute is never to be overlooked in its construction and application, and it should always have a reasonable construction."

In the case of State ex rel. Monier v. Crawford, 303 Mo. 652, l.c. 661, the court said:

"The general language referred to cannot be construed to destroy specific contrary provisions in the later act, nor will the fact that the two acts are passed at the same session prevent the later from repealing and modifying the former if they are in irreconcilable conflict. When two acts in pari materia are passed at the same session they are to be construed so that both can stand if reasonable construction will permit. Nevertheless, if there is irreconcilable repugnancy, the later act prevails."

We call your attention to the fact that in Section 11786, R. S. Mo. 1929, quoted supra, the following proviso is made:

" * 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; * "

In the case of Brown v. Patterson, 224 Mo. 639, the court said, l.c. 658:

"The office of a 'proviso' is to limit or restrict the general language preceding it, and not to enlarge the enacting clause."

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Also, in the case of State v. Breckenridge,
219 Mo. App. 587:

"As a rule, exceptions in statutes are
strictly construed."

CONCLUSIONS.

We are of the opinion that the Legislature, by enacting Section 11786, setting forth plainly and concisely the aggregate amount of fees the circuit clerks of the State could retain as their compensation, includes fees from every source and of every nature, and that the only fees or compensation that a clerk can receive in addition to the amount specified in said section are change of venue cases.

Therefore, we construe the clause, "in addition to the fees and deputy hire allowed under the provisions of section 11811, R. S. 1929" to permit the circuit clerk to make the charges as contained in the sections, but he must account for such fees and include the same in the amount that he may retain as compensation.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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