

CIRCUIT CLERKS: Change of Venue fees earned prior to the first Monday in January, 1935, are payable into the County Treasury.

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April 17, 1936.

Honorable Richard Chamier  
Prosecuting Attorney  
Randolph County  
Moberly, Missouri



Dear Sir:

We acknowledge your request for an opinion dated April 10, 1936, which reads as follows:

"Alfred C. Jones, Circuit Clerk of Randolph County, Missouri, has requested the following opinion: Ray McDonald was the Circuit Clerk of Randolph County, Missouri, during the time that office was on a salary basis. Several cases came to Randolph County on a change of venue. The Clerk of the Circuit Court is entitled by law to fees from change of venue cases in addition to his salary.

"The cases were not disposed of until the retirement of Ray McDonald from office. The fees were paid during the time Alfred Jones was Circuit Clerk.

"Mr. Jones wishes to know whether he is entitled to keep the fees earned during McDonald's administration and paid during his administration, or if he must pay said fees to McDonald, the former Clerk.

I am enclosing herewith a copy of an opinion rendered by this department by the Honorable Carl C. Abington, Assistant Attorney General, to Honorable Forrest Smith, dated February 28, 1933. I am also enclosing a copy of an opinion rendered by this department by the Honorable James HornBostel, Assistant Attorney General, to Charles S. Huckstep, dated April 1, 1935.

April 17, 1936.

Construing these two official opinions together, this department has held that a circuit clerk holding the office prior to the first Monday in January, 1935, received legal compensation as a salary and not on a fee basis. We held that said salary was in lieu of all fees, including fees for change of venue cases. We held that the circuit clerk, during this period, collecting change of venue fees must account for same and pay them into the county treasury in accordance with the provisions of Section 11814 R.S. Mo. 1929, then in force. In the opinion to Mr. Huckstep we held that a circuit clerk, holding an office after the first Monday in January, 1935, was entitled to retain, as compensation for services, all fees earned by him in cases of change of venue from other counties, without accounting for same.

It is elementary law that a public officer is entitled only to those fees which he can point his finger to in the statutes authorizing same. Your letter admits that the change of venue fees were earned in the McDonald administration, that is, were earned prior to the first Monday in January, 1935. There can be no doubt that these fees, not being earned by Mr. Jones, do not belong to Mr. Jones, the present circuit clerk. We have already shown by opinion to Forrest Smith that Mr. McDonald is not entitled to them, for he was entitled only to his salary for the time he held office.

Section 11814, Laws of Missouri 1933, p. 372, provides:

"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. Such clerk shall, at the end of each quarter, file with the county clerk a report of all fees paid and accruing to his office during such quarter, 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. 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."

Hon. R. Chamier

-4-

April 17, 1936.

CONCLUSION.  
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We are of the opinion that these change of venue fees earned prior to the first Monday of January, 1935, should be paid into the County Treasury, as provided in Section 11814, Laws of Missouri, 1933, p. 372, supra.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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

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