

CIRCUIT CLERK:

Not entitled to retain drainage tax fees under Sec. 10879 in addition to maximum amount of fees he is entitled to retain under Sec. 11786, R.S. Mo. 1929.

March 9, 1936.



Hon. J.H. Kennedy,
Circuit Clerk,
Grundy County,
Trenton, Missouri.

Dear Sir:

This department is in receipt of your letter of February 29 wherein you make the following inquiry relating to the fees of the circuit clerk in drainage tax suits:

"We would like to know if the clerk of the Circuit Court is entitled to retain clerk's fees in drainage tax suits.

"Under section 10879, R.S. 1929, it seems that the clerk is entitled to these fees in addition to his salary and change of venue fees."

Section 10879, R.S. Mo. 1929, mentioned in your letter, provides:

"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."

In 1933 the Legislature repealed section 11786, R.S. Mo. 1929 and enacted in lieu thereof a section by the same number, the pertinent part of which is as follows: (Laws 1933, p. 369)

"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.
* * * * "

The remainder of the section classifies the counties according to population and permits the circuit clerk to retain not to exceed a definite amount of fees. The only proviso in the nature of an exception is: "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."

Section 11814, Laws of Missouri, 1933, p. 372, relates to the report of fees which it is the duty of clerks of courts of record to render, and the pertinent part is as follows:

"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. * * * * "

Bearing in mind that in Section 11786 (Laws of Mo. 1933, p. 369) the Legislature has said "The aggregate amount of fees that any clerk of the Circuit Court * * * shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out", and the proviso containing the exception of change of venue fees, and the words in Section 11814 (Laws of Mo. 1933, p. 372) "or any other statute", we are of the opinion that it was the intention of the Legislature for the Circuit Clerk to only retain the maximum amount of fees as set out in Section 11786, and must account for the fees as provided in Section 10879, and that same is an accountable fee.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

OWN:AH