

COUNTY CLERK: 8 questions relating to fees.

2-20

February 14, 1936.



Hon. J.R. Oliver,
Clerk of County Court,
Dunklin County,
Kennett, Missouri.

Dear Sir:

Some time ago this department received a letter requesting an opinion on various items with respect to the fees of county clerks. In complying with your request, we shall undertake to divide the questions as outlined in your letter.

I

"Section 12183, 1929 statutes provides an allowance to be fixed by the Court for various services, specifically excepting sections 12145, 12146 and 12147. Section 12161 provides for various duties to be performed by the county clerk. Noting the aforesaid exceptions, I am of the opinion that I am permitted to charge five cents for filing cancelled warrants. Is this charge also applicable to filing other vouchers presented by the Treasurer in his settlements?"

Article 8, Chapter 85, relating to county treasurers, funds and warrants, contains provisions relative to the duties of the county clerk, the principal section being Sec. 12161, R.S. Mo. 1929, which provides:

"It shall be the duty of the clerk of the county court: First, to keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the amount he may have disbursed between the periods

of his respective settlements with the court; second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom; third, to file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted in evidence in all courts of law and elsewhere; fourth, to issue warrants on the treasury for all moneys ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof."

The above section states in detail your duties with respect to accounts. With reference to vouchers we call your attention to the words "third, to file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk * * * * " The section does not provide any specific fee or compensation for the duties therein enumerated, nor does any other section in Chapter 85 indicate any specific fee.

We have consulted Section 11781, R.S. Mo. 1929, same being the section in which general fees of the county clerk are enumerated, and we find no provision which, in our opinion, would entitle you to any such fee. We therefore conclude that the compensation for the duties on your part is governed by Section 12183, which provides:

"The court shall allow to the clerk of the county court, for his services under this article (except sections 12145, 12146 and 12147) such compensation as may be deemed just and reasonable."

On March 30, 1935, this department rendered an opinion to Hon. L.E. Cass, Clerk of the County Court, Marshfield, Mo., in which it was held that the county clerk is not entitled to any fee for issuing county warrants or for cancelling the same, but is entitled to the fee of \$.05 as provided in Sec. 11781, R.S. Mo. 1929 for the filing of said cancelled county warrants.

II

"Section 11781 provides for a charge of \$.10 per 100 words and figures for recording papers not otherwise provided for. Am I entitled to this fee for recording and indexing accounts, and if I am, would it be permissible for me to charge for words printed in the county court record of accounts allowed?"

Section 11781, R.S. Mo. 1929 provides:

"* * * For copies of records and papers not hereinbefore provided for, for every hundred words.....\$.10"

We are of the opinion that this provision refers and applies to records other than county court minutes or records; that when in the course of the proceedings of the court it is necessary for you to supply copies of the record of the minutes, a charge of \$.10 per hundred words could be made, otherwise, you are not entitled to the charge of \$.10 for recording and indexing accounts and for the record of the allowance of the same. It is our opinion that the compensation for such services is covered by the general section, 12183, and, as stated before, the copying of the minutes come within the provisions of Sec. 12161, for which there is no special compensation allowed you except that as provided in Sec. 12183, R.S. Mo. 1929.

III

"What fees, if any, is the Clerk entitled to for the services rendered in the opening and adjournment of court from day to day? More particularly, is adjournment an order of the Court?"

Section 2083, R.S. Mo. 1929 provides for the terms of court and when the same shall be held. The section does not contain any provision for any formal opening of the court, nor does Sec. 11781 provide for any fee for you as county clerk when court is opened--in fact, we are of the opinion that strictly speaking, it

is not your duty to open court, nor to adjourn the same. We presume you refer to the provision in Sec. 11781 "For every rule or order not hereinbefore specified, or copy thereof.....\$.15". However, we are of the opinion that this does not refer to the orders of opening and adjourning the county court and as a consequence, you are not entitled to the fee of \$.15.

IV

"Accounts are often filed which are not approved by the Court for a period of several days of court sessions. Are these accounts to be regarded as continued?"

Section 12161, R.S. Mo. 1929, quoted in Part I of this opinion contains the provisions:

"third, to file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, * * * * fourth, to issue warrants on the treasury for all moneys ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof."

We construe this section to mean that if the accounts remain unapproved and unaudited by the county court for a period of several days, the same are not continued and that it is your duty to keep them on hand ready for the inspection and consideration of the court and that there is no special fee for you in doing so; the duties performed by you in connection therewith are taken in consideration in the general compensation section, to-wit, Sec. 12183; therefore, the provision for every continuance of a cause or other proceeding is not applicable to the accounts which have been unaudited or delayed by the county court.

V

"Are accounts allowed considered as judgments or orders?"

We assume this question relates to the provision in Section 11781, R.S. Mo. 1929, which provides:

"*** For entering every judgment.....\$.30 * * *"

On April 24, 1935 this department rendered an opinion to to the Honorable Elliott M. Dampf, Prosecuting Attorney of Cole County, in which this question was discussed and the allowing of an account was declared not to be a judgment. Copy of said opinion is enclosed herewith.

VI

"Distinguish between 'oath' and 'certificate' for which I am permitted to charge \$.25, and 'certificate' and 'seal' for which I am allowed \$.50."

Section 11781, R.S. Mo. 1929 provides, among other things, "For every certificate and seal not hereinbefore provided for.....\$.50" and "For oath and certificate to an affidavit...\$.25". Section 4480, R.S. Mo. 1929 refers to the meaning of "verified" and "oath" and is as follows:

"The word 'verified' when applied to any pleading or paper required in any criminal cause means supported by oath or affirmation. The word 'oath' includes the word 'affirmation', and the phrase 'to swear' includes 'to affirm.'"

In discussing the question of fees of a Notary Public and the definition of "certificate" and "seal", the Supreme Court of Missouri, in the case of Land & Imp. Co. v. Morten, 183 Mo. App. 637 said (l.c. 640-642):

"It is argued that, as the statute is to be strictly construed, it does not reveal an intention on the part of the Legislature to allow a

greater fee to a notary public for the same service than that authorized in favor of a justice of the peace, and it is said the last clause of the statute on notaries above referred to manifests a purpose of the Legislature to refer matters of this kind for determination by the schedule of fees prescribed for justices of the peace. But, obviously, this argument is unsound, for it appears the Legislature has pointedly, in express terms, fixed the fee in favor of notaries public to be 'For certificate, attested by seal, fifty cents.' It will be observed, by reference to section 10692, concerning the fees of a justice of the peace, that the Legislature referred to such a service as rendered here--that is, the endorsement thereon by the justice of his official voucher or jurat that the affiant had sworn to and subscribed the facts stated in the affidavit--as a 'certificate', for it says 'for certificate to affidavit, fifteen cents.' Obviously, if this service of the justice be a certificate made by him in the process of taking an affidavit, then it is to be regarded in the sense of the Legislature as a certificate, too, when performed by a notary public. Section 10712, pertaining to the charges, reads, 'For certificate, attested by seal, fifty cents.' It appears, therefore, that the Legislature classified this service when performed by a justice of the peace as a certificate, and from this the intention is clear that the word 'certificate', when used in connection with the notary's fees, intends, among other things, the same--that is, the affixing by the notary of a jurat to an affidavit taken by him--but requires the further act on his part of attestation by his seal. The word 'certificate' is defined

by Webster as 'A written testimony to the truth of any fact.' It is clear that the written jurat of a notary public officially made and attested by his seal is a written testimony to the truth of the fact that the affiant subscribed and was sworn to the affidavit in his presence and by him. Moreover, it appears by reference to the statute, section 10178, by which the powers of a notary public are conferred, that such an officer is authorized to 'certify....affidavits....and administer oaths and affirmations in like cases and in like manner as justices of the peace are authorized by law.' When these statutes are considered together, no one can doubt that the notary public is authorized to administer the oath to an affiant and to make a certificate of that fact on the affidavit identically as a justice of the peace is authorized to do so, and as was done in this case, but the act of a notary should be attested by his seal."

We think when you are called upon to take the jurat to an affidavit or other instrument and the same requires the seal of the office and you certify to the truth of the same, the doing of such act entitles you to the fee of 50¢, but when you merely certify under oath of your office that an instrument or writing is true, or that the same is a true copy thereof, you are entitled to the fee of 25¢.

VII

"An order is not usually made admitting paupers to the County Farm. Am I entitled to the fee which would be due me if such cases were handled in the regular manner?"

Section 11781 provides "For every rule or order not hereinbefore specified, or copy thereof.....\$.15". Applying this provision to the question of admitting paupers to the County Farm, we

Feb. 14, 1936.

are of the opinion that when such an order is made at the direction of the county court, you are entitled to the fee. We are at a loss to understand why such orders are not made and if the same is not done, you are not entitled to the fee.

VIII

"Will you please advise if I am allowed the filing fee of \$.05 for each of the following: County treasurer's receipts, Ex-officio collector's receipts and Township Collector's receipts. Also, the various settlements of the aforesaid officers?"

We are unable to find any statute entitling you to the fee of \$.05 for filing county treasurer's, Collector's and other receipts. The words in Section 11781 "For filing every paper not hereinbefore specified", we believe, refers to and means other papers and receipts than which you are by statute compelled to file. Therefore, it being a well recognized rule of law that an officer may only receive fees which the statute gives to him and that the same should be strictly construed, we are of the opinion that you are not entitled to any fee for the filing of the receipts enumerated; also, by reason of the case of Land & Imp. Co. v. Morten, 183 Mo. App. 637.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

OWN:AH