

SALARIES--FEES--COUNTY CLERKS: County Clerks shall account for all fees except two, and only receive salary fixed by 1933 Act.

December 16, 1936.

12-21



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

Dear Sir:

We acknowledge receipt of your inquiry which is as follows:

"Section 11811, 1933, Statutes provide that 'The aggregate amount of fees that any clerk of the County 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.
in counties having a population of 30,000 and less than 70,000 persons the clerks shall be allowed to retain \$2500.00 for themselves."

"Section 11781 sets out the fees of County clerks which is apparently allowed them under section 11811. The greater amount of fees earned by a County Clerk are provided for in other chapters of the Statutes and under articles other than those referred to in the aforesaid Articles.

"The following sections include a number of those not mentioned in section 11781: 5048, 12891, 12886, 9085, 13563, 12874, 10879, 10171, 8253, 10106, 9117, 10086, 7955, 13492, 13519, for taxation fees, 9262, 9877 (1933 laws), 10007

(1933 laws) 10081 and 10111, 711, 8079 and 8194, 9945 (1933 Laws) and 9955 (1933 laws).

"I am particularly interested in the fee provided in Section 10081 and 10111 1929 statutes for assessing merchants and manufacturing companies in Counties under Township organization. They would seem to me to be non accountable fees inasmuch as they are earned by virtue of the fact that the County Clerk is an ex officio assessor in counties under township organization so far as his duties with reference to assessing merchants and manufacturing companies are concerned.

"Will you kindly advise which of the fees accruing under the above sections are non accountable?"

Section 11812, Laws of Missouri, 1933, p. 371, refers to the deputies and their compensation in the circuit clerk's office, and states that every order permitting said clerk to appoint a deputy shall fix the compensation, etc., and "Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk."

Section 11814, R. S. Mo. 1929, insofar as it affects the county clerk, requires the circuit clerk to file with the county clerk a report of all fees charged and accruing to his office during such month, etc., and requires the circuit clerk to file with the county clerk duplicate receipts of the fees collected and paid the county treasurer. These sections do not designate any fee that may be charged by the county clerk for the doing of the things above set forth.

Section 11781, R. S. Mo. 1929, is the general fee statute authorizing the county clerk to make charges.

Section 12891, R. S. Mo. 1929, provides that the county clerk shall issue certain certificates with reference to wolf bounties, etc., and he "shall be entitled to a fee of fifteen cents, to be paid by the parties to whom the certificates are issued."

Section 12886, R. S. Mo. 1929, says the clerk "shall be allowed twenty-five cents for each affidavit" etc., with reference to bounties.

Section 9085, R. S. Mo. 1929, authorizes such clerk to collect certain fees under the article dealing with chiropody.

Section 13563, R. S. Mo. 1929, authorizes the clerk to collect certain fees for certificates of registration as to dental matters.

Section 12874, R. S. Mo. 1929, is a similar law with reference to the collection of dog tax.

Section 10879, R. S. Mo. 1929, provides that the county clerk shall receive certain fees for filing papers relating to drainage or levy districts, and for issuing subpoenas, etc.

Section 10171, R. S. Mo. 1929, has to do with allowances to the clerk for sending or conveying the returns of any senatorial election into any other county in the district as occasion may require, and also fixes the compensation "to any messenger who may be employed to convey the returns of any election required by law to be made to the secretary of state, at the rate of five cents per mile, going and returning."

Section 10106, R. S. Mo. 1929, has to do with peddlers' licenses and authorizes the county clerk to collect a fee of \$2.00 for recording the license, etc.

Section 10086, R. S. Mo. 1929, as to merchants' taxes states the collector shall "at the time of delivering such license, collect the sum of fifty cents, the fee herein allowed to the clerk for issuing the same, and twenty-five cents each for the bond and statement to be retained by the collector as his fee for furnishing the same."

Section 13492, R. S. Mo. 1929, provides a fee of \$1.00 for registration, filing and certificate as to nurses registering.

Section 13519, R. S. Mo. 1929, provides a fee for the registration of osteopathic physicians.

Section 10007, R. S. Mo. 1929, prescribes the fee allowed officers in the taxation and collection of the revenue.

Section 10081, Laws of Missouri, 1931, p. 360, provides certain fees to the county clerk with reference to the merchant's tax, and among other things provides

"* * * * After the county board of equalization shall have completed the equalization of such statements, the clerk of the county court shall extend on such book all proper taxes at the same rate as assessed for the time on real estate, and he shall, on or before the first day of October thereafter, make out and deliver to the collector a copy of such book, properly certified, and take the receipt of the collector therefor, which receipt shall specify the aggregate amount of each kind of taxes due thereon, and the clerk shall charge the collector with the amount of such taxes; and such clerk shall receive as compensation for making such tax book, copy, filing statements, and certifying to same, the sum of six cents for each name or firm, one-half payable by the county, the other by the state. * *

* *."

Section 10111, R. S. Mo. 1929, has to do with manufacturer's tax, and says that the county clerk shall receive as compensation for making the tax book, copy, filing statements, and certifying to same, the sum of six cents for each name or firm, one-half payable by the county, the other by the state.

Section 5048, R. S. Mo. 1929, prescribes a fee to the county clerk for recording a mark under the article on boating and rafting companies.

Section 7111, R. S. Mo. 1929, says that certain municipalities shall by ordinance fix compensation to the county clerk for certifying and transmitting an abstract of the property within towns made taxable for state purposes.

Section 8253, R. S. Mo. 1929, provides a fee to county clerks under the fish and game law, and has this further provision:

* * * * which said fee of fifteen cents, paid to said clerks shall be retained by them for such services, and said clerks are not required to account for the same in their quarterly or annual statements of fees. * * * *."

Section 7955, R. S. Mo. 1929, provides a fee to the county clerk for issuing a permit to move a house.

Section 9262, R. S. Mo. 1929, provides compensation to the county clerk for every one hundred figures in the school tax column on the general tax book.

Section 9117, R. S. Mo. 1929, provides a fee to the county clerk for recording licenses from the State Board of Health.

Section 9877, R. S. Mo. 1929, provides compensation to the county clerk for making out the tax book.

Section 8079, R. S. Mo. 1929, provides compensation to the county clerk for issuing and attesting special tax bills, as does also Section 8194.

Section 9945, R. S. Mo. 1929, provides compensation for the county clerk for making the back tax book.

Your inquiry is not as to what fees the county clerk is entitled to charge, although the multiple of sections you have enquired about refer primarily to the authority of the county clerk, as such, to charge and collect such fees rather than the authority of the county clerk to retain, as his personal compensation, such fees when so collected. It by no means follows that the county clerk or other officers authorized to collect, or charged with the duty of collecting fees, is thereby authorized to retain as his own money or compensation such fees, when collected, and the above sections which you mentioned in your inquiry are referred to in this opinion in barest outline only for such little light as they throw upon the interpretation of section 11811, Laws of Missouri, 1933, p. 370, which in part provides:

"* * * *in counties having a population of 30,000 and less than 70,000 persons, the clerks shall be allowed to retain \$2500.00 for themselves, and shall be allowed to pay for deputies and assistants \$3500.00; * * * *."

We assume that your county has a population between 30,000 and 70,000 people. This law passed in 1933 is a later expression of the legislative will than the statutes mentioned in your inquiry, and should be given full force and meaning. Every statute conferring upon an officer authority to collect a fee as his compensation should be strictly construed.

In the case of State ex rel. Troll vs. Brown, 146 Mo. 401, l. c. 406, the Supreme Court of this State says:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed vs. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

In the case of State ex rel. vs. Gordon, 245 Mo. 12, l. c. 27, the Supreme Court of this State declares as follows:

"Compensation to a public officer is a matter of statute, not of contract; and it does not depend

upon the amount or value of services performed, but is incidental to the office.

"Throop on Public Officers (Sec. 443) says: 'It has been often held, that an officer's right to his compensation does not grow out of a contract between him and the State. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office.'

"Mechem on Public offices and Officers says: 'Sec. 856. Unless, therefore, compensation is by law attached to the office, none can be recovered. A person who accepts an office to which no compensation is attached is presumed to undertake to serve gratuitously, and he cannot recover anything upon the ground of an implied contract to pay what the service is worth.' * * * *

"In Bank v. Refrigerating Co., 236 Mo. 414, Brown, J., speaking for the court, says: 'When the law requires a specific service to be performed by a public officer, he must perform that service regardless of whether any provision has been made to pay him for same.'

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and textwriters, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further,

it seems well settled that if the statute provides compensation in a particular mode or manner, then the officer is confined to that manner, and is entitled to no other or further compensation, or to any different mode of securing the same. * * * *."

And at page 29 the Court says:

"As the Legislature may fix such compensation to a public office as it sees fit, or none at all, we can see no constitutional objection to its attaching such conditions as it deems proper to the payment of the compensation, such conditions to be binding upon any one who thereafter enters upon such office and performs its duties. As stated above, the compensation has no relation to the amount or value of the service. There can be no application of the doctrine of quantum meruit. The officer takes the office cum onere. Having accepted it with the conditions imposed by the Legislature, upon whose will he must depend for any compensation at all, he cannot afterwards challenge the power of the Legislature to impose such conditions. * * * *."

In the case of King vs. Riverland Levee District, reported at 279 S. W. 195, the Court says, l. c. 196:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. * * * * . Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit, 656, to the effect that the rendi-

tion of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same."

There seems to be no doubt but what every fee authorized or collected by the county clerk under any of the foregoing sections should be turned into the county treasury, unless it be those authorized under Section 8253, R. S. Mo. 1929, and under Section 10171, R. S. Mo. 1929, the former of which specifically states that the clerk is not required to account for it in his quarterly or annual statement, and the latter of which is a statute more in the nature of provided expenses incurred by the party delivering the election returns, than it is in the nature of a fee statute, though it denominates such five cents primarily as compensation. The trite, and sometimes comprehensive and forceful expression that "A rose smells just as sweet by any other name" comes to our mind when arriving at the belief and conclusion that this latter section merely provides expense money for delivering the election returns, as in said section provided.

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, * * * *."

The county court is a court of record and would seem to come within this statute. Said section further provides:

"* * * *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 any fees collected and not accounted for by him as provided by law.* * *

CONCLUSION.

It is our opinion that the county clerk of your county should collect all the fees authorized by the foregoing or any other statutes which provide for the collection of fees by him, but that none of those fees belong to him except those collected under the provisions of Section 8253 and Section 10171, and that it is his further duty to return all such fees and to account for such fees to the county, (the above last two sections excepted) and that bearing in mind the foregoing, that the county clerk's office is on a salary basis, the amount of which salary was fixed and determined by the 1933 Act of the Legislature above set forth.

Yours very truly

DRAKE WATSON
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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