

COUNTY CLERK: Fee of 25¢ allowed to county clerk under Sec. 9955, Laws of Mo. 1933, p. 436, is an accountable fee.

COUNTY WARRANTS: Under Sec. 9911, R.S. Mo. 1929 warrants of current year may be accepted in payment of beer and liquor licenses.

37

March 6, 1936.



Hon. Henry M. Phillips,  
Prosecuting Attorney,  
Stoddard County,  
Bloomfield, Missouri.

Dear Sir:

This department is in receipt of your letter of February 27 requesting an opinion on the following questions:

I

"Is the fee in section 9955, Laws of Missouri 1933, in regard to the clerk's services as Sale Clerk an accountable fee or an unaccountable fee?"

The county clerk serves as clerk of the sale of delinquent lands and receives a fee of 25¢ on each tract of land sold, as provided in Section 9955, Laws of Mo. 1933, p. 436, which provides:

"The clerk of the county court shall attend, either in person or by deputy, as the clerk of the sale of such delinquent land, and shall enter the same on a sufficient record book giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remains unsold. For his services as in this section provided, he shall receive the sum of twenty-five cents on each tract of land or lot sold, to become part of the costs of sale and paid by the purchaser, which fee shall include entry of

recital of redemption on such record."

In 1933 the Legislature repealed Section 11811, R.S. Mo. 1929 and enacted Section 11811, Laws of Mo. 1933, p. 370, the pertinent part of which is as follows:

"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. \* \* \* "

The remainder of the section classifies the county clerks according to population and allows the clerks to retain a definite amount for themselves and deputies.

Section 11814, Laws of Mo. 1933, p. 372, relates to the report of excess fees and the payment of same, the pertinent part of which 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. \* \* \* "

The above section mentions the fee sections applicable to the office of county clerk and we call your attention to the words "or of any other statute". By the terms of Section 11811, it was evidently the intention of the Legislature to limit the

amount of fees as compensation of the county clerk, and by the terms of Section 11814 it is evident that all fees which the county clerk may exact by virtue of his office, under any statute, is an accountable fee; therefore, we are of the opinion that the fee of 25¢ mentioned in Section 9955, Laws of Mo. 1933, p. 436 is an accountable fee.

## II

"In regard to Section 9911, Revised Statutes 1929, can the county clerk accept county warrants of the current year on the payment of current licenses, such as county beer and liquor licenses, etc.?"

The constitutionality of the above section was challenged in the case of Kercheval v. Ross, 7 F. Supp. 355. In that case it was held that the state has constitutional power to pass statutes making state and county warrants, bonds and other obligations of its own subdivisions and instrumentalities legal tender for payment of future debts due the state or its subdivisions. The statute was held to be unconstitutional only in respect to permitting insolvent drainage districts to accept its past due bonds and coupons in payment of drainage taxes, thereby affecting the rights of holders of bonds issued before enactment of the statute because the same impaired the obligations of contract.

In view of the terms of Section 9911, R.S. Mo. 1929, to-wit, "\*\*\*\*Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant \* \* \*", we are of the opinion that a county warrant of the current year may be accepted by the county clerk in payment of a county beer or liquor license.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

---

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