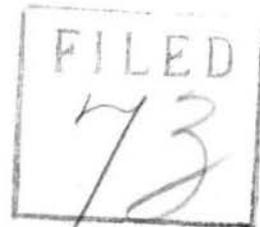


PROSECUTING ATTORNEYS: May retain as own fees provided in Section 7887, R. S. Mo. 1929, in addition to salary.

April 14, 1936. 4-20

Hon. Owen C. Rawlings,
Prosecuting Attorney,
Marshall, Missouri.



Dear Sir:

We have your request for an opinion under date of April 8, 1936, as follows:

"Please advise me as to whether or not a prosecuting attorney for Saline County, Missouri, can legally retain as his own the fees provided in Section 7887 of the Revised Statutes of Missouri, 1929, when earned in poll tax suits prosecuted by him on behalf of the commissioners of special road districts in Saline County, Missouri."

Section 7887, R. S. of Mo. 1929, provides that:

"The prosecuting attorneys shall appear in behalf of the road districts of their respective counties when suits are brought against poll tax payers, and shall receive a fee of five dollars for each judgment obtained against the defendant, which shall be taxed against the defendant as other costs in the case. Said fee shall be retained by the prosecuting attorneys in addition to their salaries, to cover their expenses in attending on the trial of said causes: Provided, that no such fee shall be recovered against any defendant unless the same shall be separately stated in summons and said defendant thereby fully notified and given an opportunity to pay such tax and avoid judgment."

The above section provides that the fee is to be retained by the prosecuting attorney in addition to his salary, to cover his expenses in attending the trial.

Section 11315, R. S. of Mo. 1929, provides that:

"It shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the clerk of the county court, and shall at the end of every quarter make out an itemized and accurate list of all fees in his office which have been collected by him, and one of all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid--said report to be verified by affidavit--and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury."

The question presented is whether by virtue of Section 7887, supra, the fee can be legally retained by the prosecuting attorney in addition to his salary, or whether same, when collected, must be accounted for and turned over to the state treasury.

In the case of Duff v. Karr, 91 Mo. App. 1. c. 21, the court said:

"Courts are warranted in considering the prior state of the law and changes in the law in ascertaining the purpose of any statute. It is the intent of the law which furnishes the best light to reach its meaning."

Section 11315, supra, first made its appearance in the statutes in the Session Acts of 1913, p. 109.

Section 7887, supra, first made its appearance in the statutes in the Session Acts of 1917, Sec. 34, p. 457.

After the enactment of Section 11315, supra, in the year 1913, the prosecuting attorney could no longer look to the various fees provided his office to supplement his salary, but must turn same over to the county treasury. Such was the state of the law when Section 7887, supra, was enacted four years later in 1917.

It is apparent from the history of the two sections that the Legislature intended to except from the provisions of Section 11315, supra, the fee earned by the prosecuting attorney, and to allow the latter to retain same in addition to his salary, to cover his expenses in attending trial in behalf of special road districts for delinquent poll tax.

In view of the foregoing, we are of the opinion that the prosecuting attorney for Saline County, Missouri, can legally retain as his own the fees provided in Section 7887, R. S. Mo. 1929, when earned in poll tax suits prosecuted by him on behalf of the commissioners of special road districts in Saline County, Missouri.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

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

MW:HR