CIRCUIT CLERKS: Circuit clerks are entitled to fees earned although not collected during the year for which they are earned, but collected in subsequent years, for one year's service.

March 2, 1937

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Mr. C. W. Baker
Circuit Clerk
Audrain County
Mexico, Missouri

Dear Mr. Baker:

This will acknowledge receipt of your letter, which reads as follows:

> "Will you please advise me if a Circuit Clerk resigns on January 1st, 1937, leaving two years of unexpired term, is he entitled to earned fees for the year 1936 to be paid him if he has not collected the full amount of fees due him, according to law, in the preceding year?"

We direct your attention to Section 11786, Laws of Missouri, 1933, page 369, relating to the aggregate amount of fees a circuit clerk may retain for one year's service. It reads in part as follows:

> "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. * * * * * provided, that in any county wherein the clerk of the Circuit Court is ex-officio recorder of deeds, said offices shall be consider-

> ed as one for the purpose of this section; 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; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

Section 11814, Laws of Missouri 1933, page 372, makes it the duty of the circuit clerk to charge and collect in all cases every fee accruing to their offices, and that at the end of each quarter to file with the county clerk a report of all such fees paid and accrued to the office of the circuit clerk. Quarterly, every circuit clerk shall pay into the county treasury the amount of any fees collected in excess of the sums permitted to be retained for his services and pay of deputies and assistants.

Casual reading of the above cited statutes indicates that the Legislature intended that the circuit clerks were to be paid on a fee basis and that the amount of fees due the circuit clerk could not exceed the maximum amounts enumerated in Section 11786, supra, for any one year's service.

We approach your precise question. Did the Legislature contemplate that the fees earned in any one year must be collected during that year in order to be retained by the circuit clerk? Or, may they be earned in one year and collected in another and be retained by the circuit clerk, provided the fees collected do not exceed the amount permitted to be retained by law?

In the case of Allen vs. Cowan, 96 Mo. 193, the Supreme Court had before it for consideration this proposition, "Can the fees earned by a circuit clerk each year he was in office, though not collected in the year in which they were earned, be

applied when collected to the payment of his salary? In passing upon the question heretofore stated, the court, at page 195-196 said:

> "In 1883 (Acts 1883, p. 93) the act of 1874 was amended, increasing the amounts authorized to be retained by clerks for deputy-hire. The obvious intent of the constitutional and statutory provisions above referred to was to fix the annual compensation which a clerk of a court of record might receive out of the fees and emoluments of the office, and the amount of such fees which he might appropriate to the payment of deputies and assistants. If the fees of the office of clerk annually earned by him amounted to a sum sufficient to pay his salary, and the compensation allowed to be paid deputies and assistants, he would have the undoubted right so to apply the same when collected. In Thornton v. Thomas, 65 Mo. 272, it was held that the fees of the office constituted a trust fund to be applied in the payment of deputies and assistants and the salary of the clerk fixed by law, and the surplus, if any after such payments, to be paid into the treasury of the county.
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> The question as to whether one of these trusts would be to supply any deficiency in the receipts of a former year to cover expenses and salaries was neither before the court nor decided in that case. If the annual fees earned by a clerk, as is held in the case above cited, are chargeable with a trust in favor of such clerk to the extent of his salary and the compensation allowed his deputies, it logically follows that whenever collected they should be applied to the discharge

> of that trust. This deduction is consonant not only with reason but the justice of the case. Under any other ruling a clerk might in a given year earn in fees a sufficient amount to pay his salary, and be deprived of a large part of it if he failed to collect the whole of the fees so earned either because earned in suits which were not determined during the year or from any other cause.
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> The views above expressed return an affirmative answer to the proposition stated, and result in an affirmance of the judgment, and it is hereby affirmed."

In the case of Harrington vs. the City of St. Louis, 107 Mo. 327, the court had before it for consideration the statute relating to the compensation of the sheriff of the City of St. Louis which statute, in effect and substance, provided that the sheriff may, for each year of his term, receive and retain fees that do not exceed the sum of ten thousand dollars ($10,000) and that all fees, compensation and emoluments collected by him as sheriff in excess of the sum permitted to be retained by him should be paid to the treasurer of the City of St. Louis. The proposition as here confronted the court is analagous in the present instance.

In passing upon the constitutional provision relating to when the fees of any executive officer, of any city or municipality shall not exceed the sum of ten thousand dollars ($10,000) and the provision when fees are earned and not collected in the year in which they are earned, the court said, at page 330:

> "The section of the constitution before quoted declares in plain terms that the fees of no such officer, exclusive of salaries actually paid to his deputies, shall exceed the sum of

$10,000, for any one year. This does not mean that the fees, over and above deputy hire, shall not exceed $20,000 for two years. The law itself divides the official term into years for all the purposes of applying the limitation as to the amount of fees which the sheriff may retain. Each year of the official term stands by itself. It follows that the sheriff must render a separate account of receipts and expenses for each year. When the fees for the particular year reach the amount of $10,000, with expenses added, the balance must be paid over to the city. The excess of one year can not be carried into another year for the purpose of bringing the fees of that year up to $10,000, with deputy hire added. It is not the object of this law to make the clear compensation of the sheriff $10,000, per annum. His compensation for each year must come from the fees and emoluments of the office for that year, but when they reach the clear sum of $10,000, the balance must be paid over to the city.

With this result it is proper to be more explicit as to what fees must be brought into each year's account. For illustration we will take the first year of the first term in this case. The receipts for that year will be composed of the fees and emoluments earned and collected during that year, and, also, of the fees and emoluments earned during the year, but collected during a subsequent year. In other words, the fees of a particular year are those earned during that year, no matter when collected. It often occurs that fees and commissions are earned in one year and collected in a succeeding year. All such fees and commissions must be

> carried into the account of the year in which they were earned."

In the case of Corbin vs. Adair County, 171 Mo. 385, the Supreme Court had before it for consideration, fees earned by a circuit clerk and collected by the successor to the circuit clerk. And, in passing upon the right of the former circuit clerk to recover the uncollected fees from his predecessor, at page 389, said:

> "The testimony of plaintiff further discloses that a large amount of fees are due him as circuit clerk, of which at least $1,200 are collectible and when collected by the sheriff or his successor they will belong to him until he has received the amount of the salary earned by him for the year 1898, not to exceed $1,600. (Allen v. Cowan, 96 Mo. 193.) So that it is apparent that the plaintiff is not remediless. To the amount of the difference between the fees collected by him which he had earned in 1898 and retained, and the amount earned and not collected for that year, not exceeding $1,600, he can demand and recover the uncollected fees from his successor, and his own evidence shows they will be more than sufficient. But these considerations are really outside of the case before us. This bill is predicated upon mistake of fact and fraud, and there is no foundation for either charge in the record, and the judgment of the circuit court dismissing his bill was right and is affirmed."

From the above cases, it will be noticed that fees earned by a circuit clerk during any particular year are entitled to be received by a circuit clerk, even though

collected in another year and that such fees, when collected, would be chargeable to that particular year's account. It will also be noticed that a person may recover from the successor to the office of the circuit clerk, fees collected by the successor, when they were earned in another year by one who was at that time the circuit clerk.

CONCLUSION

It is the opinion of this department that the circuit clerk in 1936, who resigned January 1, 1937, is entitled to all the fees earned by him in 1936, regardless of when collected, not to exceed the maximum amount he is allowed to retain under the provisions of Section 11786, Laws of Missouri, 1933, page 369.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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RCS:RT