

PROBATE JUDGE: Fee received for solemnizing marriages
to be accounted for in annual settlement.

November 15, 1937

Hon. T.H. Harvey, Judge
Probate Court of Saline County
Marshall, Missouri

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Dear Sir:

This department is in receipt of your letter of October 16, 1937, in which you request an opinion as follows:

"Will you please give me your opinion as to whether or not the fees of the Judge of the Probate Court for performing or solemnizing marriages, are to be accounted for as a part of such Judge's compensation."

A probate judge is authorized by the laws of Missouri to solemnize marriages (Section 2976, R.S. Missouri 1929). He is allowed a fee of two dollars for solemnizing each marriage (Section 11782, R.S. Missouri 1929).

Section 11782, R.S. Missouri 1929, provides that every probate judge shall, within thirty days after the expiration of each year of his term, file with the circuit clerk a statement verified by affidavit "containing a full account of all fees collected" by or for such judge during said year. This section further provides that within three months after the expiration of his term of office, a probate judge shall file with the circuit clerk a statement verified by affidavit "of all fees which accrued, but were not collected during his term of office". Further, it is provided that the probate judge must give bond before collecting "any fee whatsoever" and that said bond shall be conditioned upon the faithful performance of his duties, and the prompt and full payments when due "of each and every of the amounts to the extent and in the manner herein required" into the county treasury.

The language of Section 11782, supra, which we have quoted and underlined wherein it speaks of "all fees collected" or other words of similar import, with reference to what fees a probate judge shall account for in his settlement, could not have reference to any fees except those which are specifically provided and allowed a probate judge, for his services by said section, which sets out that probate judges "shall be allowed fees for their services as follows: For solemnizing a marriage, \$2.00." In other words, this section makes this a part of the service of a probate judge for which he shall charge a fee.

Section 2976, R.S. Missouri 1929, authorizes a judge of court of record to solemnize marriages. He is only authorized to perform a marriage because he is such a judge; said service is thereby an incident to his office. Section 2984, R.S. Missouri 1929, requires that all who are authorized to solemnize marriages shall keep a record thereof.

In *Ex parte Andrews*, 18 S.W. 2nd l.c. 582, the court has said:

"The legislative intention is to be ascertained from the words used in a statute. Another rule of construction is that effect is to be given to every word, clause and sentence within a statute. *Hannibal Trust Co., Executor v. Elzea et al.*, 315 Mo. 485, 286 S.W. 371."

Following the above rules of statutory construction, we think we have aptly illustrated in the foregoing paragraphs that the intention of the legislature in the act was that all fees enumerated must be accounted for by the probate judge in his annual settlement. To reach a different conclusion would do violence to the rule that effect must be given to every word, clause and sentence in a statute.

We have ascertained further that those charged with conducting the audit of county officials' accounts have always construed the fee in question here as an accountable fee. In *Automobile Gasoline Co. v. City of St. Louis*, 32 S.W. 2nd l.c. 283, it is said:

"The construction of a statute by those charged with the duty of enforcing it, when it has long prevailed, while not binding upon the courts, is entitled to weight where the meaning of the statute is uncertain."

CONCLUSION

Therefore, it is the opinion of this department that the \$2.00 fee allowed a probate judge for solemnizing a marriage must be accounted for by him in his annual settlement to the circuit clerk.

Respectfully submitted,

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APPROVED By:

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