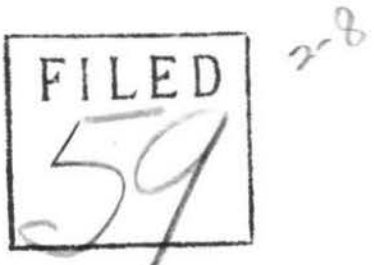
JUSTICE COURTS - Constable or justice as custodian of monies paid in connection with litigation.

February 4, 1937.



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Hon. John H. McNatt,
Associate Prosecuting Attorney of
St. Louis County,
Clayton, Mo.

Dear Sir:

A request for an opinion has been received from you under date of December 26, 1936, which request is in the following terms:

> "This is to ask your opinion on the question of whether the Justice of the Peace or the Constable should be the custodian of the fees that are received by virtue of criminal or civil process."

We are advised that under the recent readjustment of townships in St. Louis County that the population of the smallest township therein at the present time is approximately 4,500 persons, and that the population of the largest is approximately 61,000 persons, so that none of the articles or sections applying to justices of the peace or constables in townships having larger populations than that of the largest in St. Louis County would now be applicable, and therefore the governing statutes will be the general statutes on this subject. In order to make the scope of this opinion more clear, it may be remarked that we have been unable to find any statutes providing for the payment of money directly to justices of the peace, and that we have found numerous statutes requiring payments to be made to constables, and that there will be set out below these sections, the same to be followed by certain inferences and general propositions deducible from the statutory scheme.

R. S. Mo. 1929, sec. 11776, governing fees of officers, jurors and witnesses, provides for the certification and delivery of fee bills "to the sheriff or other officer of the proper county charged by law with the service of executions, who shall proceed forthwith to collect the same; * * * * and if any such officer shall neglect or refuse to levy and collect such fees, or to pay over the money collected thereon to the person entitled thereto, within three months after such fee

bill shall have been delivered to him, the court wherein such fees accrued shall, upon ten days previous notice given to such officer, on motion, enter up judgment against him and his sureties for the amount of the fee bill, interest and costs thereon. All provisions of this section concerning the collection of fee bills shall also apply to fee bills issued by justices of the peace".

Section 11809 provides as follows:

> "Justices of the peace may issue fee bills for all services rendered in their courts, and if the person chargeable shall neglect or refuse to pay the amount thereof to the constable or proper officer, within twenty days after the same shall have been demanded by such officer, he may and shall levy such fee bills on the goods and chattels of such person, in the same manner and with like effect as on a fieri facias."

As to fines in criminal proceedings before justices of the peace, section 3486 provides for the delivery by the justice before whom any conviction may be had to the county treasurer and clerk of the county court a statement of the amount of the fines and return day of the execution, "and the name of the constable charged with the collection thereof; and the county treasurer shall charge the constable with the amount of such fine, and unless the same be paid into the county treasury on or before the return day of the execution, the county court shall, at their next term, ten days notice being given to the constable in default and his sureties, render judgment against them for the amount due * * *".

Section 2194 provides that "on each summons the justice shall indorse the amount of the plaintiff's demand, with the costs that have accrued; and if the defendant shall pay to the officer serving the summons the amount claimed and costs, the summons shall be returned as satisfied * * *".

Section 2201, providing that any person having a bond, note or account on which he wishes a suit brought may place the same in the hands of the constable of the proper township for suit, provides further that "if the constable receive the money on such bond, note or account before suit is brou ht, and fail to pay it over on demand, or fail to bring suit, whereby any loss is sustained, he and his sureties shall be liable therefor on his official bond".

Section 2202 provides that if "the defendant pay to the constable the full amount of the claim, with the fees for collection and the costs which have then accrued, the constable shall certify the same to the justice, and the suit shall be discontinued".

Section 2226 provides that if the defendant makes payment under Section 2202 to the constable, and plaintiff continues to prosecute and fails to recover judgment for a larger amount, plaintiff shall pay costs accruing after such payment to the constable.

Section 2316 provides that executions in justice courts shall be directed to the constable and "that it shall be the duty of the constable, in case the amount of said judgment, or any part thereof, shall be collected before the return day of such execution, to pay the same over to the party entitled thereto".

Section 2322 provides that the constable, after sale under a justice court execution, "shall, after deducting costs, pay the money over to the party entitled thereto, and make return of such execution as hereinbefore provided".

Section 2328 provides as follows:

> "The constable of the township shall receive all money that may be tendered to him in payment of any judgment, obtained before a justice of the peace of such township, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid; and the payment shall be valid against the judgment, and, upon the production to the justice of the receipt therefor, shall be credited therewith. The person entitled to the money paid shall have the like remedies against the constable and his sureties for the recovery thereof, as if such money had been collected by the constable on execution."

Section 2329 provides as follows:

> "<u>Payment to justice not valid against judgment</u>.- No payment of money upon a judgment, made to the justice either before or after execution thereon, shall be valid against such judgment, nor credited thereto, unless paid

with the consent of the person to whom the same is due."

Section 2330, governing proceedings against a constable and his sureties, provides for their liability where the constable "has failed to have money by him collected on execution or fee bill before the justice on the return day thereof, ready to be paid to the persons entitled thereto" and where the constable "has failed to pay or deliver, upon demand of the party entitled thereto, money received by him on judgment or on demand placed in his hands for collection, and for which he has given his receipt, or money or property received in pursuance of any of the provisions of this article * * *".

Section 11749 requires every constable to give bond that he will "pay all money received by him by virtue of his office" and section 2338 provides the method by which a party aggrieved may proceed against a constable and the sureties on his bond.

Section 11759 requires every constable to receive and receipt for any claim tendered him for collection within his jurisdiction, and provides that "such constable and his sureties on his official bond shall be liable for the amount which may be collected by said constable on such claim, whether the same be collected by process or otherwise".

As stated above, we have found no constitutional or statutory provision requiring a justice of the peace to give a bond or authorizing a justice of the peace to collect any money (except his own compensation as allowed by law), or providing for the payment by any person to the justice of the peace directly of any money. In view of the fact that constables are under bond and that there are numerous statutes providing for the collection by them or payment to them of money for various costs, judgments and fines, it would seem that our statutory scheme contemplates constables and not justices of the peace as being the custodians of all monies coming through their courts. Under general principles of statutory construction, it would seem that this construction is not only intended by the statutes themselves, but is impelled by the fact that such a construction would furnish protection for the proper accounting of these monies by an official who is under a bond, whereas the other construction would not furnish any such protection. In the case of State ex rel Lentine v. State Board of Health, 334 Mo. 220, 65 S.W. (2d) 943 (1933) the court said:

"It may be considered trite to again observe that the primary and fundamental purpose in statutory construction is to ascertain and give effect to the legislative intent nevertheless such is always the end sought and the numerous rules for the interpretation or construction of statutes are merely aids in the quest. But such rules should not be so applied as to restrict or confine the operation of a statute within narrower limits or bounds than manifestly intended by the Legislature and whether the proper construction of a statute should be strict or liberal it certainly should be such as to effectuate the obvious purpose of its enactment and the evident legislative intent. Reference should be had to the policy adopted by the Legislature in reference to the subject-matter, the object of the statute, and the mischief it strikes at or seeks to prevent, as well as the remedy provided." 55 S.W.(2d) 950 (1933)

We have made no attempt in this opinion to go into the method of accounting imposed by law on constables for the payment of monies received by them to the persons entitled thereto, this opinion being confined to the question of the person to whom fees or money should be paid directly in the first instance, aside from any question of their subsequent or ultimate disposition.

In conclusion, it is our opinion that a constable, and not a justice of the peace, is the custodian of the fees received in their court by virtue of civil and criminal process, and that it is the constable who must account for such fees to the person or persons entitled thereto.

Very truly yours,

EDWARD H. MILLER,
Assistant Attorney General.

APPROVED:

~~J. E. TAYLOR~~
(Acting) Attorney General