

COUNTY CLERKS) Clerk not entitled to charge fee for certifying
) under seal document not required by statute to be cer-
FEES) tified. Clerk receives no compensation for making
) "personal delinquent list" into "back tax book".

May 6, 1938



Mr. Joseph C. Crain
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Dear Sir:

This will acknowledge receipt of your letter of April 18, 1938, in which you request an opinion on the legality and correctness of certain fees, charged as fees earned by the county clerk of Christian County in 1935 and 1936. The fees in question are set out in your letter as follows:

"1. To certifying under seal Apportionment of State aid to Clerks of the various school districts, as authorized by Secs. 9257 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"2. To certifying under seal Apportionment of County and Twp. interest to Clerks of the various school districts, as authorized by Secs. 9257 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"3. To certifying under seal Apportionment of Private car tax, to Clerks of the various school districts, as authorized by Secs. 9257 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"4. To certifying under seal Apportionment of Foreign Insurance money and Railroad Tax money, to Clerks of the various school districts, as authorized by

Secs. 9257 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"5. To certifying under seal Valuations of the various school districts, to the Clerks of school districts, as authorized by Secs. 10150 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"6. Authenticating under seal, Treasurer's report to Clerks of the various school districts, as authorized by Secs. 9267 and 11781, R.S. 1929, and charged to the County as fees earned, for each Certificate and Seal .50¢

"7. Making the 'Personal Back Tax Book' as required by Sec. 9945, 1933 Session Acts, page 426, and Secs. 9943 and 9948, R.S. 1929, and charged to the County, as fees earned @ .10¢ per name or list."

The statutes under which the clerk claims his fees in the first six of the above items is Section 11781, R.S. Missouri, 1929, which is in part as follows:

"The clerks of the county courts, respectively, shall be allowed fees for their services as follows: * * * * *
* * * * *
For every certificate and seal not hereinbefore provided for .50¢."

In State ex rel. v. Brown, 146 Mo. 401, 406, a leading case on the right of officers to claim fees, it is said:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v.

Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

Another case which we think bears on this question is Ford v. Kansas City, St. Joseph and Council Bluffs Ry. Co., 29 Mo. App. 616. In this case, the clerk of a circuit court in this state had charged a fee for preserving the oath, in the form of an affidavit, of witnesses before a grand jury when the witnesses claimed their fees and mileage. The clerk was required to swear the witness to the truth of the facts contained in the entry made by the clerk of these fees and the mileage claimed by the witness. The statute under which the clerk claimed his fee was one which provided a fee of fifteen cents "for certificate to affidavit".

The court points out in this case that the clerk was only required to swear the witness to the truth of his statement and was not required to preserve the oath in the form of an affidavit and for this reason was not entitled to this fee.

With the principles of the above cases in mind, let us see if the county clerk is required by statute to certify under his seal the papers prepared, as mentioned in the first six of the above charges.

The first four of said charges deals with the apportionment of state aid, county and township interest, private car tax, foreign insurance and railroad tax money to the clerks of the various school districts of the county as authorized by Section 9257, R.S. Missouri, 1929. This section provides that the county clerk "shall immediately after making such apportionment enter the same in a book to be kept for that purpose, and shall furnish the district clerks, and those of cities and villages, as the case may be, each a copy of said apportionment". Nothing is said requiring this copy to be certified under seal by the county clerk.

The fifth charge deals with the valuations of the various school districts and the county clerks' duties in respect thereto under Section 10150, R.S. Missouri, 1929. This section provides that the county clerk "shall on or before the third Monday in April each year certify to the county court, the city council, school boards and all other bodies * * * * the aggregate amounts of the real and personal property and the valuations thereof in the respective subdivision". Further, this section, in speaking of this valuation, calls it a "certificate".

The sixth charge deals with the report made by the county or township treasurer to the clerk of each school district in the county or township. This report is to show the actual cash on hand to the credit of each district's funds. The report must be jointly signed by the treasurer and county clerk. The authority for this is found in Section 9267, R.S. Missouri, 1929, which is in part as follows:

"The said county or township treasurer shall, on the 25th day of March and the first Monday in October of each year, deliver or mail to the clerk of each school district in the county or township an accurate and detailed statement, showing the actual amount of cash on hand to the credit of each of the district funds; and the statement made in October, as herein provided, shall show the amount of cash on hand on the day of the approval of the last settlement made by the said treasurer with the county court, and shall be jointly made and signed by the said county treasurer and clerk of the county court, and shall be a full exhibit, showing the amount of public money, railroad taxes, and all other moneys on hand or due the district by taxation, the levies made, the assessed valuation of each of said districts for the year, and the balance on hand to the credit of each district fund."

Nothing is said in this section requiring said report to be authenticated and certified under seal by the county clerk.

With reference to the fifth charge, we find that Funk and Wagnalls New Standard Dictionary defines "certify" as meaning: "to give certain knowledge or information; make

evident; vouch for the truth of; attest; make a declaration in writing, under hand, or hand and seal".

The term "certificate" is defined there as meaning: "a writing so signed and authenticated as to be legal evicence".

It seems reasonable that when the legislature used the terms "certify" and "certificate" in describing the thing to be done by the county clerk, and the valuation that the clerk prepares, they meant that said valuation was to be authenticated under the seal of the county clerk.

Only the fifth of the first six charges above is worded in this manner and under the authority of State ex rel. v. Brown and the Ford case, supra, the clerk, not being required to certify under his seal the items in the first, second, third, fourth and sixth charges above, is not entitled to charge and collect a fee if he does so certify and authenticate with his seal.

The seventh charge deals with the making of the "Personal Back Tax Books" by the county clerk, and his compensation therefor. We do not find where the statute you mention provides for a "personal back tax book", but rather, Section 9943, R.S. Missouri, 1929, speaks of this as the "back tax book". This section provides that "The clerk of the county court shall file the said list in his office, (the list is the one mentioned in Section 9942, R.S. Missouri, 1929) and within ten days thereafter make the same into a 'back tax book', as contemplated by Section 9948, under the seal of the court". Section 9942, R.S. Missouri, 1929, refers to these lists as follows: "at the term of the county court at which the several delinquent lists are required by law to be returned and certified."

The "several delinquent lists" mentioned are those under Section 9938, R.S. Missouri, 1929, described as the "personal delinquent list", the "land delinquent list" and the "delinquent list of officers". We are only concerned with the first two here. These are the lists filed in the office of the county clerk as provided in Section 9943, supra. However, it is only the "personal delinquent list" which the county clerk makes into the "back tax book". We say this because Section 9945, Laws of 1933, page 426, provides: "Hereafter as often as any delinquent tax list or tax bill shall be received by the county court * * * from collectors at their annual settlements, the same, except as to the delinquent lands, shall be made by the county clerk * * * into a 'back tax book' containing the same facts and in the same form as provided in

Section 9948 and 9952". The "delinquent land list" is to "be entered of record in the county collector's office by the collector * * in counties".

The compensation of the county clerk for making the "back tax book" is based on the tracts of land, city or town lots entered in his book and the book prepared by the county clerk only contains the personal delinquent list. Thus, there is no compensation provided for the county clerk for making the personal delinquent list into a back tax book. The fee to which the county clerk is entitled for his services in connection with the delinquent land list is found in Section 9945, Laws of 1933, page 426, which provides that, "the clerk for comparing and authenticating such record of the delinquent list of land and lots as made by the collector shall receive five cents per tract, city or town lot". The record here mentioned is the delinquent land list "entered of record in the county collector's office by the collector * * in counties".

CONCLUSION

Therefore, it is our opinion that the county clerk is not entitled to charge a fee of fifty cents for affixing his certificate and seal to the apportionment made by him, of state aid, county and township interest, private car tax, foreign insurance and railroad tax money to the clerks of the various school districts; that the county clerk is not entitled to a fee of fifty cents for affixing his certificate and seal to the report made jointly by him and the treasurer of the cash on hand to the credit of each district's funds; that the county clerk is entitled to charge and collect a fee of fifty cents for certifying under his seal the valuation of the various school districts to the clerks thereof; that the county clerk is not entitled to charge and collect a fee for making the "personal delinquent list" into a "back tax book", but is entitled to a fee of five cents per tract, city or town lot for authenticating the record of the "delinquent land list" entered of record in the collector's office by the collector.

Respectfully submitted,

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APPROVED By:

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