

CRIMINAL COSTS: Witness fees uncalled for in the county treasurer's office should be held one year from the time of the receipt of same before returning to state treasurer or county revenue fund.

August 15, 1938

Mrs. Pearl McBride
County Treasurer
West Plains, Missouri



Dear Mrs. McBride:

This is to acknowledge receipt of your request for an opinion under date of August 5, 1938, which is as follows:

"A situation has recently arisen in my office on which I would appreciate your ruling.

"Our County was recently audited by the State Office and of course the fee records were examined and the Auditors compiled a list of the old unclaimed fees to be returned to the State and County, which I returned while the Auditors were here.

"About ten days ago I was handed a letter by the Circuit Clerk from a man who had fees in a case which was included in the State Criminal Cost that was returned to the State on May 28, 1938. I immediately wrote this gentleman telling him the unclaimed fees in the case had been returned to the State. Yesterday this man came to my office and demanded that I issue him a check for his fees which I, of course, did not and could not do after same had been returned to the State. This man has threatened me with legal procedure. This was a State Case, Grand Larceny of Hogs, tried in February, 1936 and cost paid by

the State on October 18, 1937, and returned to the State on May 28, 1938.

"I was kind enough to write this man, which the law does not require me to do, when I received the cost bill in the case advising him that his fees in the case were payable, but received no response. Therefore, his unclaimed fees were returned to the State under Section 3856, which I am referred to in my Treasurer's Manuel sent to me by the State Auditor.

"I will appreciate your ruling in this matter by return mail as this man will be back here in two or three days."

Section 11823, R. S. Mo. 1929, reads as follows:

"It shall be the duty of all sheriffs, marshals, coroners, and all clerks of courts of record, and all other officers, to enter in such book all fees that they may now have in their hands belonging to others, giving the name of the owner and amount of such fees."

Section 11824, R. S. Mo. 1929, reads as follows:

"It shall be the duty of each sheriff, marshal, coroner, clerk of the courts of record, and other officers, on the first day of January and the first day of July in each year, to pay over all fees in their hands belonging to others to the treasurer of the county, with the name and amount belonging to each person, date when collected and in what case, taking from the treasurer duplicate receipts therefor, one of which the officer shall file with the clerk of the county court, who shall immediately charge the treasurer with the same."

Section 11825, R. S. Mo. 1929, reads as follows:

"Such treasurer shall keep a correct account of such fees in a book kept for that purpose, the account to correspond to that required to be kept by other officers in section 11822, and shall pay out the same to the proper owners as the same may be called for or demanded, and shall, in his regular settlements with the county court, make a full and complete exhibit of all his acts under the provisions of this chapter."

Section 11826, R. S. Mo. 1929, reads as follows:

"It shall be the duty of the treasurer, when any such fees shall remain in his hands for one year uncalled for or demanded by the proper owner or legally authorized agent, to turn the same over to the general revenue fund of the county."

The above Sections 11823, 11824, 11825, and 11826 were passed originally and set out in the Session Laws of 1891 at page 138. As you will notice, under Section 11826 it was the duty of the treasurer to hold uncalled-for fees for one year and then turn the same over to the general revenue fund of the county. It made no distinction between fees paid in by the state on state criminal cases and fees paid in by the county court on county criminal cases. In 1899, after the passage of the sections hereinbefore set out in 1891, a new section was passed and known as Section 2859, R. S. Mo. 1899. This section is now Section 3856, R. S. Mo. 1929, and reads as follows:

"At the end of each term of court after the receipt of each criminal cost fee bill from either the state auditor or the county clerk, the treasurer shall strike a balance of the same, and shall turn over the amounts collected on account of the various items of indebtedness hereinbefore mentioned to the various

funds to which they belong. And all uncalled-for fees paid by the state shall be turned into the state treasury, and those paid by the county shall be turned over to the credit of the county revenue fund."

This section did not by implication or by the language of the section repeal Section 11826, R. S. Mo. 1929, except as to the phrase, "to turn the same over to the general revenue fund of the county." This Section 3856 by implication only repealed Section 11826 to the extent of the addition of the following phrase:

"And all uncalled-for fees paid by the state shall be turned into the state treasury, and those paid by the county shall be turned over to the credit of the county revenue fund."

This phrase did not repeal Section 11826, which required the county treasurer to hold all uncalled-for fees which were paid by the state treasurer in state cases one year after receiving same before turning them back to the state treasurer.

It is well settled that when two sections of the statute relating to the same subject are repugnant, it does not necessarily follow that it repeals the whole section, but only that part that is repugnant. This was so held in the case of State v. Taylor, 18 S. W. (2d) 474, 1. c. 476, where the court said:

"The two acts should be construed so that each may stand and be given effect, if possible. The later statute should be construed to repeal the former only in so far as the two acts may be found to be in conflict. *Wrightsmen v. Gideon*, 296 Mo. 214, loc. cit. 223, 247 S. W. 135, and cases cited."

In the case of State ex rel. and to Use of Geo. B. Peck Co. v. Brown, Secretary of State, 105 S. W. (2d) 909, 1. c. 911, the court said:

"Repeals by implication are not favored--in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent, both must stand. These principles of construction are well settled.' State ex rel. Boyd v. Rutledge, 321 Mo. 1090, 13 S. W. (2d) 1061, loc. cit. 1065. Also, see State ex rel. Younger v. Stratton, 136 Mo. 423, 38 S. W. 83; State v. Taylor, 323 Mo. 15, 18 S. W. (2d) 474; State ex rel. Wells v. Walker, 326 Mo. 1233, 34 S. W. (2d) 124; State ex rel. R. Newton McDowell v. Smith, 334 Mo. 653, 67 S. W. (2d) 50, 57; State ex rel. Karbe et al. v. Bader, 336 Mo. 259, 78 S. W. (2d) 835."

In the case of State ex rel. v. McCracken, 95 S. W. (2d) 1239, l. c. 1241, the court said:

"Statutes which are in pari materia should be read and construed together in order to keep all the provisions of the law on the same subject in harmony, so as to work out and accomplish the central idea and intent of the lawmaking branch of our state government, * * *."

CONCLUSION

Under the above authorities, it is the opinion of this department that although Section 3856, R. S. Mo. 1929, provided for the return of uncalled-for fees paid by the state, for which the state was responsible, into the state treasury, and also provided for the return of the uncalled-for fees paid by the county, for which the county was liable,

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into the county revenue fund, it did not set out the time for the return of the uncalled-for fees. Section 11826, supra, provided that the county treasurer must hold all uncalled-for fees above described for a period of one year after receiving same before returning said fees to the county revenue fund. It is further the opinion of this department that Section 3856, supra, only repealed Section 11826, supra, in respect to the place of payment of the uncalled-for fees, in that the county treasurer is ordered to return uncalled-for fees paid by the state, for which the state is responsible, into the state treasurer's office, and the money paid into the treasurer's office by the county on fees for which the county is responsible, which have been uncalled for, into the county general revenue fund. All fees remaining uncalled for must be held by the county treasurer one year from the time the fees are paid into the office of the county treasurer. The only way the witness described in your request can receive his fees at this time, as set out in your request, would be by a relief bill by the Legislature.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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