

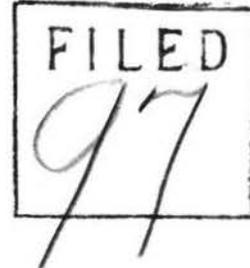
PROSECUTING ATTORNEY)
CIRCUIT CLERK)
COUNTY CLERK)

Cannot apply fees collected to salary and
assign salary warrant to treasurer in lieu
of paying said fees into treasury.

May 16, 1938

5-23

Hon. Carl E. Williamson
Prosecuting Attorney
Ripley County
Doniphan, Missouri



Dear Sir:

This department is in receipt of your letter of
May 5, 1938, in which you request an opinion on the follow-
ing question:

"May a county officer who is paid a
stated salary, and who also, by
virtue of his office, receives cash
in the nature of fees, retain the
cash fees and turn into the county
treasury the same amount of his
county salary warrants, and thus
comply with statutory provisions
concerning the paying of said fees
into the treasury, and the payment
of his salary."

You refer us to two opinions heretofore rendered by
this department. One, to Howard R. Maness, Prosecuting At-
torney of Ripley County under date of January 28, 1933,
answers the above question in the negative. The other, to
J.E. Johnson, Treasurer of Ripley County, under date of
July 4, 1933, answers the above question in the affirmative,
with the qualification that said warrant must be worth at
once its face value.

The Prosecuting Attorney, Clerk of the Circuit Court
and Clerk of the County Court are the officers concerned, be-
ing the county officers who charge and collect fees for their
services and receive a stated salary in lieu thereof.

The Prosecuting Attorney charges and collects fees
for the services rendered by him, in some instances, and must
account for and pay these fees into the county treasury
monthly. Section 11315, R.S. Missouri, 1929. The Prosecuting
Attorney is paid monthly, by warrant, a stated salary in lieu
of all other fees. Section 11314, Laws of 1937, page 178.

The Circuit Clerk charges and collects fees for the services rendered by him and must account for and pay these fees, except change of venue fees, into the county treasury monthly. Section 11814, Laws of 1937, page 447. The Circuit Clerk is paid monthly, by warrant, a stated salary in lieu of all other fees, except those the statute expressly provides he may keep. Sections 11786 and 11814a, Laws of 1937, pages 445 and 447.

The County Clerk charges and collects fees for the services rendered by him and must account for and pay these fees into the county treasury monthly. Section 11811, Laws of 1937, page 441. The County Clerk is paid monthly, by warrant, a stated salary in lieu of all other fees, except those the statute expressly provides he may keep. Section 11811, supra.

Thus, we see the similarity in the mode each of the above officers is to be paid. Each charges and collects fees for his services and must account for and pay the same, with some exceptions, into the county treasury monthly. Each receives a stated monthly salary in lieu of those fees he must pay into the county treasury.

In Mechem on Public Officers, Section 873, page 585, it is stated that:

"An officer who is compensated by a salary payable out of the public treasury, and whose duty it is to pay into the treasury the fees received by him, cannot retain from such fees the amount of his salary, or offset the amount due to him as salary against an action for the fees so collected. Said the court in such a case of one who was wharfinger of a city and ex officio collector of levee dues: 'His duties were to collect the money due to the city in the department in which he held office; his obligation was to deposit the money so collected in the city treasury. His salary was to be paid as the salaries of other officers of the city were paid, to wit: out of the common treasury. There is no place for the plea of compensation in a case of this kind. Compensation takes place of right

between individuals when the debts due by the respective parties are equally due and demandable, and where the character of the debts is the same. It cannot be opposed by a fiduciary acting in the line of his duty. There is no such thing as compensating a debt due by an agent for moneys collected by him in the performance of his duties, by a debt due by the principal to the agent. No officer of a government, State or municipal, is empowered to pay himself his salary, or plead in compensation a demand made against him for moneys collected by him in his official capacity, by an amount due him on account of his salary. His duty is to discharge the obligations of his office according to the terms of his acceptance thereof and to get his pay as other officers get theirs. In other words, he cannot pay himself.' New Orleans v. Finnerty, 27 La. Ann. 681, 21 Am. Rep. 569."

This statement from Mechem is in effect approved in King v. Riverland Levee District, 279 S.W. 195, 196 (Mo. App.) where it is said:

"that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans v. Gordon, supra. (245 Mo. 12)"

To permit the officer to assign his salary warrant to the County Treasurer in payment of the fees collected by that officer would be to change the mode of payment of his salary, even though indirectly, causing him to be paid on this basis, and as if entitled to retain all fees up to a certain amount (the amount of his salary) and pay the excess, if any, into the county treasury. The law does not permit a thing to be done indirectly that is prohibited being done directly. State ex rel. v. Gordon, 236 Mo., l.c. 767.

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The statutes contemplate that the officer collect the fees charged by him in legal tender or perhaps a check, which is at once worth its face value. It also contemplates that the fees collected be paid into the county treasury in the same medium of exchange.

CONCLUSION

Therefore, it is the opinion of this department that the Prosecuting Attorney, Circuit Clerk and County Clerk of counties in this state may not retain for their own use the fee collected by them for their services and assign their salary warrant to the County Treasurer as payment into the county treasury of the fee so collected, unless said warrant is worth at once its face value. These officers must pay the fees so collected to the County Treasurer in legal tender or other medium of exchange worth at once its face value, and may look only to their salary warrant for their compensation.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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