

TAXATION: County clerk is entitled to retain ten cents for each county dog license, in addition to his regular salary.

February 10, 1939

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Hon. Edward V. Long
Prosecuting Attorney
Bowling Green, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated February 7th, 1939, which reads as follows:

"At page 224 paragraph one, Laws of 1937, it is provided that the County Clerk shall receive ten cents (10¢) for each County Dog License issued which shall cover all of his services in the matter. Please advise me that since the County Clerk is on a salary basis is he entitled to retain this ten cents (10¢) fee for each license issued in addition to his regular salary."

Section 11811, Session Laws of 1937, page 442, reads partially as follows:

"* * * * *
It shall be the duty of the clerks of county courts to charge and collect in all cases every fee accruing to their offices by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month stating on what account such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of such clerk. It shall be the duty of such clerks upon the filing of said re-

port to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided."

This section 11811, is the general law providing for the salary of county clerks, deputies and assistants.

Section 12874 Session Laws of 1937, page 225, reads partially as follows:

"* * * * *
Such clerk shall retain out of the money received for each license issued the sum of ten cents, which shall cover all his services under this article, and he shall pay the balance and all other sums received by him under the provisions of this article, less the cost of license tags, record books, blank applications and affidavits and the cost of transmitting the balance to the treasurer of the county."

It will be noticed that section 12874, supra, is a special enactment allowing a special fee for added duties of the county clerk.

It will also be noticed that the section specifically says:

"Such clerk shall retain * * *
the sum of ten cents * * *"

and the balance should be paid into the treasury of the county. This section is not ambiguous and specifically states that the county clerk should retain the ten cents and pay the balance into the treasury of the county and need not comply with

section 11811, supra, which provided that in view of the county clerk receiving a stated salary, all fees accruing to their offices should be turned into the county treasury.

It will be also noticed under section 12874, supra, that such clerk shall retain the ten cents as set out therein.

The courts have construed that where a general law is enacted on a certain matter, and a special law is enacted upon a certain matter, which matters are somewhat in common, the special enactment governs for such exceptions made by the special enactment. It was so held in 67 S. W. (2d) 50, l. c. 57, paragraphs 10-12, 334 Missouri 653.

" 'It is the established rule of construction that the law does not favor repeal by implication but that where there are two or more provisions relating to the same subject matter they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions.' Lewis-Sutherland, Stat. Const. vol. 1 (2d Ed.) Sec. 274, pp. 537-539. See, also, State ex rel Rutledge v. School Board, 131 Mo. 505, 516, 33 S. W. 3; Manker v. Faulhaber, 94 Mo. 430, 440, 6 S. W. 372.

" 'In many of the cases just cited (under the passage quoted supra) there was a general repeal of all inconsist-

ent acts and parts of acts. As a general rule the insertion of this general repealing clause does not add anything to the effect of the general act to repeal local or special laws.' Lewis-Sutherland, supra, p. 529."

Section 12874, supra, is not a violation of the State Constitution which forbids the increasing of the salary of an incumbent while in office, for the reason that new and additional duties have been imposed on the clerk which are not imposed upon county clerks of other counties, in which counties the dog tax law has not been adopted. It was so held in the case of State ex rel vs. Sheehan, 269 Mo. 421, l. c. 429, where the court said:

"Another contention made is that since the appellant was an officer at the time of the passage of the act, it is inapplicable to him because the Constitution prohibits any increase in the pay of an officer during his term of office. We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (Cunningham v. Current River Railroad Co., 165 Mo. 270; State ex rel v. Walker, 97 Mo. 162; State ex rel v. Ranson, 73 Mo. 89; State ex rel. v. McGovney, 92 Mo. 428; * * *"

CONCLUSION.

In view of the above authorities it is

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the opinion of this department that the county clerk, in counties which have adopted the dog tax law, is entitled to retain for himself ten cents for each county dog license issued which shall cover all of the services in the matter, notwithstanding the fact that the county clerk is on a salary basis. The ten cent fee should be retained in addition to his regular salary.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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