

CIRCUIT CLERK:) He shall make his report and
EX-OFFICIO RECORDER) pay all fees in monthly and the
OF DEEDS:) county court shall pay the clerk
who is ex-officio Recorder of
Deeds a salary at the end of
each month. Both procedures are mandatory.

October 17, 1939

Mr. John W. Porter
Clerk of the Circuit Court
Ex-Officio Recorder of Deeds
Clinton County
Plattsburg, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of October 11, 1939, which reads as follows:

"I am writing to you for your opinion on the matter of my salary as Clerk of the Circuit Court and Ex-Officio Recorder of Deeds, as set out in Sections 11786-11812-11813-11814 and 11814a Laws Missouri 1937.

"I want specifically to know whether or not the County Court has a right, legally, to hold up the payment of my salary in the event that I am unable to get my monthly report in exactly on the last day of each month as provided by Section 11786 cited above.

"We have several firms that we carry on a monthly account and bill at the end of the month, and sometimes it is several days before we get all of the money in with which to make our settlement with the County Treasurer. This pertains to the office of Recorder of Deeds only."

Under Article 2, Chapter 84, R. S. Missouri, 1929,

the circuit clerk under sections 11811, 11813, and 11814 R. S. Missouri, 1929, was paid on a salary basis. In the Session Laws of Missouri, 1933, this method of payment was repealed and amended to the extent that he was paid on a fee basis, that is, he was limited to the amount that he may retain of the fees for his salary. The Session Laws of 1933 were amended changing the law back to the method as set out in the general statutes of Missouri, 1929, in that he was paid a flat salary.

Section 11786 R. S. Missouri, 1929, as re-enacted, which repealed the Laws of 1933, and now appears in Session Laws of 1937, at page 445, partially reads as follows:

"* * * Provided, it shall be the duty of the Circuit Clerk, who is ex-officio Recorder of Deeds, to charge and collect for the county in all cases every fee accruing to his office as such Recorder of Deeds and to which he may be entitled under the provisions of Section 11804 or any other statute, such Clerk and ex-officio Recorder shall, at the end of each month, file with the County Clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of such Circuit Clerk and ex-officio Recorder of Deeds, upon the filing of said report, to forthwith pay over to the County Treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the County Clerk, and every such Circuit Clerk and ex-officio Recorder of Deeds 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 portion of Section 11786, supra, specifically states that it shall be the duty of the Circuit Clerk who is ex-officio Recorder of Deeds to make a report of all fees, in all cases, that he collects at the end of each month. This section is mandatory and repeals by implication the old section which provided that the report only be made each three months. It was specifically stated at the end of each month he should pay the money over to the County Treasurer. Since the statute is mandatory, it is the duty to pay at the end of each month, and if not paid, the Circuit Clerk and ex-officio Recorder of Deeds shall be liable on his official bond for all fees collected and not accounted for by him. There is also a criminal section which applies to the refusal of the Circuit Clerk to make his reports according to law.

Section 11830 of Article 2, Chapter 84, R. S. Missouri, 1929, which was not repealed, either by the Session Laws of 1933, or the Session Laws of 1937, reads as follows:

"Every person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense in any sum not less than fifty dollars nor more than one thousand dollars, and conviction thereunder shall work a forfeiture of his office."

Under the above authorities it is the opinion of this Department that it is mandatory upon the Circuit Clerk, who is ex-officio Recorder of Deeds, that he make his reports monthly and pay his fees into the office of the county Treasurer monthly, and if he fails to follow this mandatory provision he is liable to a civil suit upon his bond and also he is liable on a criminal action for the violation

of the provisions of Article 2, Chapter 84, R. S. Missouri, 1929.

Section 11813 R. S. Missouri, 1929, required that the salaries of the Circuit Clerk shall be paid out of the county treasury in monthly installments at the end of each month. This section was repealed in 1933 for the reason that the Circuit Clerk was allowed to retain his salary out of the fees of his office, but in the Session Laws of 1937, Section 11813, the original section of the Revised Statutes of Missouri, 1929, was re-enacted; it reads as follows:

"The salary of the Clerk, and that of his deputies, and assistants, shall be paid out of the county treasury, in monthly installments, at the end of each month. The accounts of all deputies and assistants shall be stated in their names, respectively, and the correctness thereof shall be certified by the officers, respectively, in whose employment they are. The Clerk and his deputies and assistants shall present their accounts to the County Court, and said court shall draw its warrant therefor upon the County Treasurer, to be paid out of any money available in the treasury."

Under the above section the salary of the Clerk shall be paid out of the county treasury in monthly installments at the end of each month. This statute is mandatory and there is no provision which gives the county court authority to withhold this salary at the end of each month on account of the Circuit Clerk, who is ex-officio Recorder of Deeds, not making his regular report and turning in the fees collected at the end of each month as required under Section 11786, Laws of Missouri, 1937.

Section 11813, supra, is still a part of Article 2, Chapter 84, of the general law, and any violation of the provisions of that chapter is subject to the same criminal action and the same civil action, as set out in that article, which applies to the violation

Mr. John W. Porter

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of the article by the Circuit Clerk who is ex-officio Recorder of Deeds.

WHEREFORE, it is the opinion of this Department that the county court cannot legally hold up the payment of your salary in the event that you are unable to get your monthly report in exactly on the last day of each month as provided by Section 11786 R. S. Missouri, 1929.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

TYRE W. BURTON
(Acting) Attorney-General

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