

CIRCUIT CLERKS: Interested parties desiring papers recorded in office of circuit clerks may obtain same by paying fee provided in Section 11678, R. S. Mo. 1929.

February 20, 1939

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Attention: Mr. W. A. Holloway

Dear Sir:

We are in receipt of your letter of February 17th wherein you state as follows:

"We are in receipt of your opinion dated January 24, 1939, construing Sections 11677 and 11678, R. S. Mo., 1929, and stating that same are still in effect.

This opinion implies by extended quotations of Sections imposing duties on circuit clerks to charge and collect for the county in all cases every fee accruing to this office, including fees under Section 11678, R. S. Mo. 1929.

It is further pointed out that Sections 11677 and 11678, R. S. Mo. 1929, were not repealed by the 1937 Session Acts.

In a situation where a circuit clerk taxes a recording charge regularly under these sections in all cases filed in his office, is such procedure in compliance with the Statutes?"

Sections 11677 and 11678 R. S. Mo. 1929 to which you refer provides as follows:

Section 11677 -

"In all civil actions any party interested therein may, upon payment of the fees, have any or all of the following papers recorded in the office of the clerk of the circuit court in the county in which such action is brought: Petitions, summons, affidavit for publication of notice to nonresident or unknown defendants, sheriff's, or other officer's, return of service to summons, proof of publication of notices to nonresident or unknown defendants, answers, motions, notices of sale of property involved and proof of its publication, return of sale by any sheriff, commissioner, or other officer, in case of sale of real estate, affidavit of commissioner, notice to parties by commissioner in partition, and any other paper or pleading tending to show the service on the defendants for their appearance in such case."

Section 11678 -

"All clerks of the circuit court shall receive as compensation for recording papers under section 11677 of this article the sum of ten cents per one hundred words, to be retained by said circuit clerks, and said clerks are not required to account for same in their annual or quarterly settlements."

As we understand your letter, and as Messrs. Barlow

and Garrison, of your staff, advised orally, a number of circuit clerks are recording various papers outlined in Section 11677 R. S. Mo. 1929, such as petitions, summons, affidavit for publication of notice, etc., without being requested by any interested party, and proceeding to tax same as costs in every case, which they retain as fees.

Some circuit clerks have evidently construed the phrase "have any or all of the papers recorded in the office of the clerk of the county in which such action is brought," as being mandatory upon them to record said papers. Such, however, is clearly not the case for the statute provides that same is only to be recorded when "any party interested therein may" desire same to be done, and "upon the payment of the fees."

Section 11676 R. S. Mo. 1929 provides what matters are to be recorded by the clerk:

"Every clerk shall record the judgments, rules, orders and other proceedings of the court, and make a complete alphabetical index thereto; issue and attest all process when required by law and affix the seal of his office thereto, or if none be provided, then his private seal; keep a perfect account of all moneys coming into his hands on account of costs or otherwise, and punctually pay over the same: Provided, that where the clerk of the circuit court is a party, plaintiff or defendant (whether singly or jointly with others) to a suit or action, the writ of summons and all other process shall be issued by the clerk of the county court, the reason therefor being noted on said process, and said latter named clerk shall, on the trial of said cause, act as temporary clerk of the circuit court and otherwise perform in said cause all the duties of the circuit court clerk."

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From the foregoing, we are of the opinion that circuit clerks are not to record papers outlined in Section 11677 R. S. Mo. 1929 unless specifically requested by parties interested therein, and when so requested are entitled to the fee provided in Section 11678 R. S. Mo. 1929.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

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(Acting) Attorney General
MW:RT