

JUSTICES OF THE PEACE:  
SALARIES AND FEES:

A justice of the peace who is paid a salary cannot retain the fees which come into his court.

June 12, 1939



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

This is in answer to your request wherein you request an opinion from this department on the question of whether or not justices of the peace in certain cities and townships who receive a salary may also retain the fees which are paid into their courts.

The request indicates that the justices particularly referred to are those of Jackson County which come under special statutes.

As a general proposition of law any public official must point to the statute which authorizes him to receive a certain salary or to retain a said fee. Section 2136 R. S. Missouri 1929, provides as follows:

"Each municipal township, except as otherwise provided by law, shall be entitled to two justices of the peace, to be elected and commissioned in the manner hereinafter provided; but in case there shall be in any such township an incorporated town or city having a population of over two thousand inhabitants, and less than one hundred thousand inhabitants, said town or city shall be entitled to one additional justice of the peace, who shall be a resident of such town or city; and in all

municipal townships that now contain or may hereafter contain a city of one hundred thousand inhabitants, and less than three hundred thousand inhabitants, the county court of the county in which said city is located shall, on or before the first day of March, 1890, divide the said township into districts, not to exceed eight, as nearly equal in population as may be possible; and at the general election in 1890, and every four years thereafter, there shall be elected in each of said districts, by the qualified voters thereof, one justice of the peace, who shall possess the qualifications required by law for other justices of the peace, shall take the same oath, possess the same jurisdiction, and shall hold his office for four years and until his successor is elected and qualified, and who shall be a resident of and keep and maintain his office in the district for which he is elected. The persons now holding the offices of justices of the peace in townships affected by this article shall continue to perform the duties of their respective offices until the general election of 1890, at which time one justice of the peace for each district, as herein provided, shall be elected, after which time there shall be no other justices of the peace in townships affected by this article, except as herein provided for."

Section 2136-a, Laws of Missouri, 1935, page 210, provides as follows:

"In all municipal townships which have been divided, or may hereafter be divided, into justice of the peace

districts and in which the boundary of the municipal township is or may be extended beyond the boundaries of said justice of the peace districts, the county court of the county in which said township is or may be located is authorized and empowered to appoint and commission not to exceed two additional justices of the peace for such township when, in the opinion of said county court, there is need for such justices of the peace, who may maintain their offices at any convenient place in said township and who shall take the same oath and have the same duties, qualification and jurisdiction as other justices of the peace of such township. The justices of the peace first appointed under this section of the statute shall hold office till the general election day in 1938, and all other justices of the peace thereafter appointed hereunder shall hold office for a term of four years: Provided that said office shall terminate at any time the aforesaid justice of the peace districts are extended so as to include all of the territory of such township. Each justice of the peace appointed under this act shall have authority to appoint a constable who may appoint not to exceed three deputies, which constable and deputies shall hold office at the pleasure of the appointing justice of the peace, and shall take the same oath and possess the same qualification, and have the same duties and authority and give the same bond as other constables and deputies in said township. Said justices of the peace and constables shall, in lieu of salary, be allowed the same fees for services as is provided for justices of the peace and constables in Section

11777 and 11779 respectively of Article 2, Chapter 84, Revised Statutes of Missouri, 1929. All acts or parts of acts in conflict herewith, to the extent of such conflict, are hereby repealed."

It will be noted from this section that the justices of the peace who may be appointed by the provisions thereof are authorized to receive and retain the fees which are provided by Sections 11777 and 11779 of the Revised Statutes of Missouri, 1929, but these fees are retained in lieu of the salary that other justices of the township may be permitted to retain.

Under Article IX of Chapter 10, Revised Statutes of Missouri, 1929, and as amended in Laws of Missouri, 1937 at page 212, justices of the peace in townships from two hundred to four hundred thousand inhabitants were allowed a salary of Thirty-six hundred dollars (\$3600.00) per annum. Under Laws of Missouri, 1933 at page 210, justices of the peace in that class are required to report the fees and costs by Section 2379, which is as follows:

"All fees and costs collected in said courts not paid to or collected by the constables or their deputies, shall be paid to and received by said clerks, and in no instance paid to or received by said justices; said clerks shall pay over all said fees collected for services of the justice to the treasurer of said county every thirty days, accompanied by a statement thereof, sworn to by them, and all other costs collected by said clerks shall be paid by them every thirty days, accompanied by a like sworn statement, to the constables of the respective districts, who shall be responsible for the same, and pay over the same to the parties entitled thereto, as now required by law in case of costs collected by or paid to said constables."

Hon. Forrest Smith

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As we understand this is the class within the justice of the peace in Jackson County come.

CONCLUSION.

From the foregoing it is the opinion of this department that the justice of the peace, in case he is receiving his compensation on a salary basis, may only receive the salary and is not authorized to retain the fees which may come into that court.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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