

CIRCUIT CLERKS: Sections 11677 and 11678 R. S. Mo. 1929 are still in effect.

January 24, 1939



Mr. Joe Turnbow
Clerk, Circuit Court
Johnson County
Warrensburg, Missouri

Dear Sir:

We acknowledge receipt of your letter of January 14th, as follows:

"I am writing for an opinion from your office on Sections No. 11677 and No. 11678, in regard to clerks compensation for recording certain papers and his compensation for the same.

I would like to know if, in your opinion, these sections are still in force, and if clerks can still charge for services under these sections."

Section 11677 R. S. Mo. 1929 provides:

"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 R. S. Mo. 1929 provides:

"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."

Salaries of circuit clerks are governed by Section 11786, Laws of Missouri 1937 page 445, and said section after determining the amounts of salaries for circuit clerks in the various counties provides 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; Provided, further, that the Clerks of the Circuit Courts shall be allowed to retain in addition to the sums allowed in this Section, all fees earned by him in cases of change of venue from other counties; Provided, further, that until the expiration of their present term of office, the persons holding the office of Circuit Clerk shall be paid the maximum amount as now provided by law, in the manner provided by this Act."

Section 11786, supra, appears in R. S. Missouri 1919 as Section 10995 and after determining the amount of salaries of circuit clerks in the various counties provides 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 10112 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."

Other than the difference in the amounts paid the clerks in the various counties, the essential difference between the 1919 and 1937 provision, at least for the purpose of this opinion, is that the latter provides that the circuit clerks may retain in addition to the sum allowed him by said section "all fees earned by him in cases of change of venue from other counties."

No reference is made to fees allowed circuit clerks under Sections 11677 and 11678, supra.

The statutes providing compensation of circuit clerks have been confusing by reason of the manner in which they

have been set up in the various revisions. A thorough discussion of these statutes, which is too lengthy to set out in this opinion, is found in the case of Perkins vs. Burks et al 78 S. W. (2nd) 845 l.c. 849, 850. The court after discussing the history of the legislation said:

"It is only possible to clear up the meaning of these sections by going to the Laws of 1915 for the original enactment. When this is done, it is clear that section 10995, R. S. 1919, now section 11786 R. S. 1929, is the only statute which provides for the compensation of circuit clerks."

The essential difference between 1929 and the 1937 provision is the same as that between the 1919 and 1937 provision, viz., the provision as to retention of fees earned by the clerks in cases of change of venue.

It is to be noted that the Perkins case, supra, declares that Section 11786 R. S. Mo. 1929 "is the only statute which provides for the compensation of circuit clerks". What the court meant was that Section 11786, supra, was the only general statute applicable to the compensation of circuit clerks.

The above court did not have before its consideration Sections 11677 and 11678, supra, which were passed in 1921 and appears in the laws of that date, Sections 1 and 2, page 197. It is thus evident that in 1921 the two sections were passed as an exception to the 1919 Act. The question arises whether the 1937 Act repeals Sections 11677 and 11678, supra, by implication.

It is a well settled rule of statutory construction that the law doesn't favor repeals by implication, and in the case of State vs. Bader 78 S. W. (2nd) 835, l.c. 839, 336 Mo. 259 the rule is stated as follows:

"The law does not favor repeals by implication. If by any fair interpre-

tation all the sections of a statute can stand together, there is no repeal by implication. ' Gasconade County v. Gordon, 241 Mo. 569, 145 S. W. 1160, 1163."

In the case of State ex rel St. Louis Police Relief Association vs. Igoe 107 S. W. (2nd) 929 l.c. 9, 340 Mo. 1166 the court stated the rule:

"There is no express provision in the 1929 act repealing section 8979. It follows, therefore, that the later act did not repeal the former statute unless it did so by necessary implication. We need not cite authorities to the effect that repeals by implication are not favored by the law. The question of repeal is one of intention and the presumption is against the intention to repeal where express terms are not used. State ex rel. Moseley et al. v. Lee et al., 319 Mo. 976, 5 S. W. (2d) 83, 88; State ex rel Heimburger v. Wells, 210 Mo. 601, 109 S. W. 758; State ex rel. Boyd v. Rutledge 321 Mo. 1090, 13 S. W. (2d) 1061, 1065."

There is no express provision in the 1937 Act, supra, repealing Sections 11677 and 11678, and they are readily harmonized so that a repeal by implication is not favored.

An examination of Sections 11677 and 11678 also reveals that the fees accrue to the office as circuit clerk and not as Recorder of Deeds within the meaning of Section 11786, supra, providing that "every fee accruing to his office as such Recorder of Deeds * * * shall be 'paid into the county treasury as herein provided'".

From the foregoing, we are of the opinion that Sections

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11677 and 11678 of R. S. Mo. 1929 are still in effect and that circuit clerks can still charge and retain said fees for services under said sections.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

COVELL R. HEWITT
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MW:RT