

COUNTY COURTS: Salary of county courts in counties having 75,000 inhabitants and less than 90,000 inhabitants.

January 17, 1940

Hon. George H. Skidmore
Asst. Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Sir:

This will acknowledge receipt of your letter of December 22, 1939, requesting an opinion from this Department, which reads as follows:

"A simple disagreement as to the meaning of two statutes has occurred, and I feel justified in asking your office for an interpretation.

"Section 11780 regulating the fees of county judges provides 'for solemnizing marriages \$2.00.' Laws of 1933 at page 375 provides that in counties of the class of Greene County, the county judges shall receive a salary of \$2700.00 annually, and the conclusion of said section is as follows: 'said salaries to be in lieu of all other salaries, fees, commissions or emoluments of whatsoever kind under and by reason of the terms of any statutory provision outside of this article.'

"The question I would like your views on is as to whether a county judge in Greene County, if he solemnizes a marriage, may retain the \$2.00 fee for himself, or whether he is required to turn it in to the county trasury."

Under Section 2976 R. S. Missouri, 1929, the county court is authorized to solemnize marriages and for this service a fee of \$2.00 is allowed. Said section reads as follows:

"Marriages may be solemnized by any judge of a court of record or any justice of the peace, or any licensed or ordained preacher of the gospel, who is a citizen of the United States or who is a resident of and a pastor of any church in this state."

Section 11780 R. S. Missouri, 1929, reads as follows:

"The judges of the county court shall receive for their services as follows:

For taking every acknowledgment of a deed or other instrument of writing...	\$0.50
For oath and certificate to affidavit.....	.25
For solemnizing marriages.....	\$2.00
For an ordering suspending sale of personal estate.....	.75
For granting and drawing a writ of habeas corpus, and deciding thereon	3.00
For each day actually engaged in holding court.....	5.00

For each mile necessarily
traveled in going to and
from the place of holding
such court..... .05"

"Provided, that such mileage shall
be charged only once for each term
of court."

Therefore, unquestionably the county court
receives this fee for solemnizing marriages and
same is received by virtue of his office for ser-
vices rendered.

Now the question, shall the county court of Greene County
retain the \$2.00 for himself or is he required to
turn same into the county treasury?

The 57th General Assembly enacted House
Bill #263, page 375, Laws of 1933, Section 1 of which
provides the salary certain county officers shall
receive in counties which now contain or may here-
after contain a population of 75,000 inhabitants
and less than 90,000 inhabitants. Under this pro-
vision judges of the county court shall receive
\$2700 each per annum. Section 1 of said act reads
as follows:

"From and after the passage and ap-
proval of this section, the follow-
ing salaries per annum shall be paid
the hereinafter named officers of all
counties in this State, which now con-
tain, or may hereafter contain, a popu-
lation of 75,000 inhabitants, and less
than 90,000 inhabitants, viz: Collector
of Revenue four thousand (\$4,000.00)
dollars; Judges of the County court twenty-
seven hundred (\$2700.00) dollars each;
Clerk of the Circuit Court four thou-
sand (\$4,000.00) dollars; Clerk of the
County Court four thousand (\$4,000) dol-
lars; Recorder of Deeds thirty-two hun-
dred (\$3200.00) dollars; County Treasurer

thirty-two hundred (\$3200.00) dollars; County Assessor four thousand (\$4000.00) dollars; all of said salaries to be paid in monthly installments on the first day of each month from the available funds of the County Treasury. Said salaries to be in lieu of all other salaries, fees, commissions or emoluments of whatsoever kind under and by reason of the terms of any statutory provisions outside of this article."

The last sentence of the above provision provides that "Said salaries to be in lieu of all other salaries, fees, commissions or emoluments of whatsoever kind under and by reason of the terms of any statutory provisions outside of this article." which we conceive clearly restricts the county court from retaining any fee or part thereof as a part of his salary.

In Johnson, Clerk of Board v. Deuser, County Treasurer, et al. 56 S. W. (2d) 803, l. c. 805, the Court in construing Section 2092 R. S. Missouri, 1929, pertaining to salaries of the County Court in counties now or hereafter having 150,000 inhabitants and less than 300,000 inhabitants which contains a similar provision to the one in question and in part reads as follows:

"* * *. In all counties of this state now or hereafter having ninety thousand inhabitants and less than one hundred fifty thousand inhabitants, the judges of the county court shall receive an annual salary of three thousand dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, as provided by section 7894. In all counties of this state now or hereafter

having one hundred fifty thousand inhabitants and less than three hundred thousand inhabitants, the judges of the county court shall receive an annual salary of forty-five hundred dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, under the provisions of section 7892, R. S. 1929, and in lieu of all other fees, compensation, or salaries, heretofore allowed by law to said judges, except the per diem as allowed to said judges as members of the board of equalization and board of appeals."

held that such a statutory provision allowing judges of the county court to receive a certain salary in lieu of the fees therefor allowed, nullifies the statute giving them as members of the Board of Plumbing Inspectors surplus fees. In so holding, the court said:

"Though the case at hand is not without its difficulties, we nevertheless cannot escape the conclusion that in enacting section 2092, the Legislature meant just what it said, namely, that thereafter the judges of the county court in counties affected thereby should be paid a stated annual salary in lieu of all the other compensation theretofore allowed them, save for the per diem allowed them as members of the board of equalization and appeals. Certainly the language of the section itself is broad and comprehensive enough to lead at once to that interpretation; and we are further persuaded to that conclusion by reason of the fact that the Legislature specifically exempted the per diem allow-

ance payable by virtue of membership on the board of equalization, but made no exception in the case of excess fees earned by the board of plumbing inspectors and supervisors. Rather, it said that the salary fixed by the section should be in lieu of all other fees, compensation, or salaries, save as to the one exception expressly noted."

* * * * *

"Conceding that in the enactment of the plumbing act, constituting the county court the board of plumbing inspectors and supervisors, the Legislature did impose new and additional duties upon the county judges for which they were entitled to be compensated, it does not follow that the Legislature was powerless to have fixed a maximum compensation for all duties of whatsoever character performed. In fact, section 2092 expressly recites that the salary fixed thereby shall be in lieu of the per diem theretofore allowed the judges 'as judges of the county court,' and also in lieu of all other fees, compensation, or salaries allowed them by law, including compensation for membership on the board of road overseers; the one exception noted being for membership on the board of equalization and appeals. Thus it appears that the Legislature in enacting section 2092 had the very thought in mind which appellants now advance, and that it framed the statute accordingly; nor is it amiss to call attention to the fact that this is not the only instance in the statutes where the Legislature has fixed a maximum salary for members of courts as compensation for all the duties, regular and additional, which have been imposed upon

them by law. And the fact that the provision is made for the members of the board of examiners to be paid out of county funds if the proceeds derived from the operation of the act prove insufficient, in no wise militates against our conclusion."

We think the following words "said salary to be in lieu of other salaries, fees and commissions" is not unambiguous and clearly prohibits the county court from retaining any fee he formerly was entitled to receive by virtue of his office. This view is further supported by the 57th General Assembly enacting in this same bill Section 4, which provides what disposition shall be made with any and all fees received by said officers, and reads as follows:

"In all counties to which this Act shall apply every official mentioned in this article shall, at the end of each month, or on or before the 15th day of the succeeding month, make out an itemized and accurate list, verified by his oath, of all fees or commissions due to his office, which have been collected by him or her, giving the name of the person or persons paying the same, and for what service rendered, and shall file one copy of said list or report with the County Treasurer, and one with the County Auditor, and shall pay over to the County Treasurer all moneys collected by him or her and covered by said report, taking two receipts therefor, one of which shall be immediately filed with the County Auditor."

Furthermore, Section 7 of the same act specifically prohibits any officer mentioned in Section 1 from receiving any compensation or retaining any fees, compensation or emoluments from any provision of law otherwise than in this act provided, and reads as follows:

"Any official mentioned aforesaid, of any county aforesaid, who shall fail or neglect to comply with any provision of **this article**, shall forfeit his salary for that quarter of the year and be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in a sum not less than fifty dollars nor more than five hundred dollars for each offense, and if he shall continue in default for three months, his office shall be deemed vacant, and shall be filled as provided by law for filling vacancies therein."

Even had this act not so provided that said officers shall pay over said fees to the County Treasury since they do not belong to said officers, they must belong to the county, and would be payable to the county by those in whose hands they are as in the case of other persons charged with county funds.

In the case of Johnson, Clerk of Board v. Deuser, County Treasurer, et al. 56 S. W. (2d), l. c. 806, the court said:

"Concededly, there has been no express legislation upon the subject. However, if such surplus fees do not belong to the members of the board itself, then they belong to the county, and therefore would be payable into the county treasury by those in whose hands they are, as in the case of other persons chargeable with county funds. The general statutes are broad enough to cover that contingency, and appellants do not contest the point if we are correct in holding that they themselves are not entitled to retain the surplus funds remaining."

Hon. Geo. H. Skidmore (9) January 17, 1940

CONCLUSION

Therefore, it is the opinion of this Department that Section 1, page 375, Laws of 1933, regulates and controls the salary that the county judges shall receive in counties of the size of Greene County; that such county judges shall each receive per annum a salary of \$2700.00, and no more. All fees, commissions and compensations coming to the said court by reason of said office shall be turned over to the County Treasurer as provided by Section 4, page 376, Laws of 1933.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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