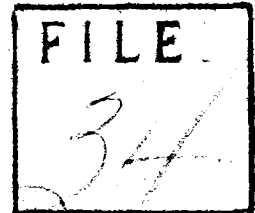


TOWNSHIP CLERK: Is entitled to ten cents for filing a cancelled warrant and ten cents for each complaint or statement filed with him as clerk of the township board.

September 26, 1941

Honorable Arthur U. Goodman, Jr.
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated September 16, 1941, which reads as follows:

"Please favor me with an official opinion as to the fees which may be legally charged and collected by a township clerk and assessor.

"Can such clerk and assessor legally collect \$100.00 annually for making up reports as to the amount of money each school district has on hand, etc.? This refers to the annual reports to the County Superintendent of Schools.

"Can such clerk and assessor legally charge and collect 20¢ for each check issued by the Treasurer (presumably 10¢ for the check and 10¢ for the claim filed) and/or 10¢ for filing such check when it is returned by the bank? I am informed at least one clerk has collected a total of 30¢ on each check issued."

The law applicable to your request is Section 13987, R. S. Missouri 1939, which reads as follows:

"The township clerk, as clerk, the township trustee, as trustee, members of the township board, and judges and clerks of election, shall each receive for their services two dollars and fifty cents per day:

Provided, that the township clerk shall receive fees for the following, and not per diem, for serving notices of election, or each: For filing any instrument of writing, ten cents; for recording any order or instrument of writing, authorized by law, ten cents for every hundred words and figures; for copying and certifying any record in his office, ten cents for every hundred words and figures, to be paid by the person applying for the same; and provided further, that the township trustee as ex officio treasurer shall receive a compensation of two per cent for receiving and disbursing all moneys coming into his hands as such treasurer when the same shall not exceed the sum of one thousand dollars and one per cent of all sums over said amount."

Under the above section it specifically allows, as salary to a township clerk, as clerk, a per diem of two dollars and fifty cents per day. It further allows the township clerk certain fees, which fees are to be paid in lieu of a per diem salary. The first provision is the filing of any instrument of writing for which the clerk shall receive ten cents. The second provision is for the recording of any order or instrument of writing authorized by law for which the clerk shall receive ten cents for every one hundred words and figures. The third provision is for copying and certifying any record in his office for which he shall be allowed ten cents for every one hundred words and figures to be paid by the person applying for the same. In all, the section only provides for a certain fee for filing, for recording and for copying. This section does not contain any provision for the payment of the township clerk for making up reports as to the amount of money each school district has on hand, that is, an annual report to the county superintendent of schools. The only reference we find as to the payment for reports made to the county superintendent of schools appears in Section 13967, R. S. Missouri 1939, which provides that the township trustee and ex officio treasurer "shall file with the township clerk on or before the day of the regular meeting of the township board in April a detailed statement of all money by him received

and paid out, to whom and out of what fund, and the amount on hand, * * " The fee for the filing of the above report by the township trustee and ex officio treasurer should only be ten cents as set out in Section 13987, supra, under the provision "for filing any instrument of writing ten cents."

In order that the township clerk should charge fees for certain services he must be able to point out the statute authorizing such fees. We have been unable to find where the township clerk is entitled to collect one hundred dollars annually for making up any school report to the county superintendent of schools. In the case of State ex rel. v. Brown, 146 Mo. 401, 1. c. 406, the court, in holding that an officer is only entitled to statutory fees, said:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

Also, in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, 1. c. 860, par. 8, the court said:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams

v. Chariton County, 85 Mo. 645."

CONCLUSION

In view of the above authorities it is the opinion of this department that a township clerk and assessor cannot legally collect one hundred dollars annually for making up reports as to the amount of money each school district has on hand which report in your request is described as an annual report to the county superintendent of schools.

The second question in your request refers to the issuing of checks. I presume you mean the issuing of warrants by order of the township board. The section applicable is 13983, R. S. Missouri 1939, which reads as follows:

"When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed-- said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant."

We find no provision in Section 13987, supra, for the payment of a fee for the drawing of any instrument; in fact that section only provides a fee for filing, recording or copying, and in view of State ex rel. v. Brown, 146 Mo. 401, l. c. 406, and Nodaway County v. Kidder, 129 S. W. (2d) 857, l. c. 860, par. 8, it is our opinion that the township clerk is not entitled to any fee for the issuing of a warrant on the order of the township board. Under Section 13978, before a claim shall be allowed by the township board it must be filed with the township clerk or with the board when in session and must be verified to the amount and nature of the claim setting forth that the same is correct and unpaid. For the acceptance of this filing of claim under Section 13987, the township trustee is entitled to ten cents for each claim filed.

In your second question you also inquire if the town-

ship clerk is entitled to a fee for filing the returned, cancelled check which means, I presume, the returned, cancelled warrant. In this state the courts have held that a paper or document is said to be "filed" when it is delivered to the proper officer and lodged by him in his office. At common law a file meant a thread, string, or wire upon which writs and other exhibits of courts and officers were fastened or "filed" for the more safe-keeping, and right turning of the same. Barber Asphalt Paving Co. v. O'Brien, 107 S. W. 25, 29, 128 Mo. App. 267. In other states it has been held that a paper is "filed" when it is delivered to the proper officer, and by him received to be kept on file. King v. Atlantic Coast Line R. Co., 68 S. W. 769, 770, 86 S. E. 510; Smith v. Geraty, 109 N. Y. S. 738, 739, 58 Misc. 556; Meek v. State ex rel. Linville, 88 N. E. 299, 301, 172 Ind. 654; Yaltz v. State, 103 P. 1104, 1105, 3 Okl. Cr. 20; Falley v. Falley, 50 So. 894, 895, 163 Ala. 626.

Since the warrant is returned to the township clerk after having been paid, it should be placed in the proper file with the claim as filed before the township clerk, and for that reason it is our opinion he is entitled to ten cents for the filing of the cancelled warrant.

CONCLUSION

In view of the above authorities it is our opinion that under Section 13978, supra, which describes the procedure of presenting claims against a township, upon the filing of the statement of the claim with the township clerk he is entitled to ten cents and upon the filing of the cancelled warrant he is entitled to ten cents, under Section 13987, R. S. Missouri 1939, so that on any one claim, which has been paid by a warrant drawn on order of the township board, the most that a township clerk can receive is ten cents for the filing of the claim and ten cents for the filing of the cancelled warrant.

It is further the opinion of this department that the township clerk is not entitled to any fee for the drawing of the warrant for the reason that the allowance is not set out in Section 13987, supra, but only provides a fee of ten cents for the filing, and not the drawing, of any instrument of writing.

Hon. Arthur U. Goodman, Jr.

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September 26, 1941

It is further the opinion of this department that the township clerk is not entitled to collect one hundred dollars annually for making up reports as to the amount of money each school district has on hand but is entitled to a fee of ten cents for the filing of the report of the township trustee in the office of the township clerk a detailed statement of the financial condition of the township as set out in Section 13967 R. S. Missouri 1939.

Respectfully submitted

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APPROVED:

VANE C. THURLO
(Acting Attorney General)

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