

COUNTY COURT: RIGHT OF RECOUPMENT: A county court may recoup against claim by officer for salary.

November 19, 1941

Mr. Leo J. Harned
Prosecuting Attorney
Sedalia, Missouri



Dear Mr. Harned:

This is in reply to your letter of recent date wherein you request an opinion on the following statement of facts:

"According to the State Auditor's report the Clerk of the County Court, Mr. William Bryan Rissler, is indebted to the County in a considerable sum of money, to wit; some (\$6,800) sixty-eight hundred dollars, for which suit has been filed by the County.

"The County Court has made an order to withhold the salary of the County Clerk until the determination of this matter. It is my theory that a set off applies.

"I would like your opinion as to whether or not it is possible for the County Court to withhold the salary of the Clerk of the County Court where the Clerk of the County Court is indebted to the County. I would appreciate this at your earliest convenience."

Inasmuch as this matter appears to be in litigation, and in view of the fact that it is the policy of this department not to write official opinions on matters which are pending before the courts, we hesitate to write an official opinion on your question. However, on October 22, 1941, we wrote to Mr. Rissler, the County Clerk, indicating that the County Court had authority to withhold his salary until the claim was settled, and for that reason we will furnish you with our opinion at this time.

Under Section 992, R. S. Mo. 1939, it seems that the right of set-off against a county is provided for. This section reads as follows:

"In all actions or suits at law, or any other legal proceeding instituted by any county, city or town within this state against any person for the enforcement, collection or recovery of any debt, demand, claim or pecuniary liability, any debt, demand or claim existing, due or owing to such person and held by him in his own right, against said county, city or town, before and at the time of the commencement of said proceeding against such person, may be set off against such debt, demand, claim or pecuniary liability of said county, city or town. (R. S. 1929, Sec. 340.)"

In the case of State ex rel. Buder v. Hackman, 265 S. W. 532, the Supreme Court of Missouri, en banc, had before it the question of recoupment by the state. In that case money had been paid to an assessor under a mistake of law. Later it seems that the assessor had billed the state for services rendered. The state in that case sought to offset the claim of the assessor for his compensation by the amount which it had paid to him under a mistake of law. At l. c. 536, the court said:

"We have thus found that \$589.36 of the relator's account is properly due him from the state. Respondent contends that he may lawfully withhold the payment of this amount, for the reason that he has previously overpaid relator on account of items, which he now claims relator was not entitled to receive when so paid. Such payments covered items for charges similar to those we have herein disallowed. Respondent claims this right under authority of the law of recoupment. There is no question under the record that respondent has previously paid relator money to which he was not entitled. Relator admits in his reply that, for the item of clerk hire alone, he received \$1,820.92 on claim filed January 2, 1922, and \$3,124.36 on his claim filed May 5, 1922, as well as compensation for other items we have disallowed."

"Certainly, if the state may, in a separate suit, recover back money paid by one of its

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officials to another public official under mistake of law, it may withhold money admittedly due such public official which is less in amount than the sum previously paid him by mistake. * * * *"

We think that the same rule would apply to the county that applies to the state.

CONCLUSION

We are therefore of the opinion that the County Court may withhold compensation due the Clerk of the County Court if the Clerk is indebted to the county.

Very truly yours,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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