

CIRCUIT CLERKS, COUNTY CLERKS: Not entitled to retain fees to apply upon fixed salary.

January 13, 1941

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Hon. Arthur Nicholson, Judge
County Court, Southern District
Eminence, Missouri

Dear Sir:

This will acknowledge receipt of your letter of January 9, 1941, asking for an opinion upon the following question:

"Will you kindly render me an opinion regarding the payment of the offices of county clerk and circuit clerk salaries in counties corresponding to this one. The thing I am anxious to know is the method the county court should follow in the payment of their salaries. It is contended by some that they should be allowed to retain the fees collected by them as part or all of their salary and that the court should pay the balance due them by county warrant. That is the policy this court has been following in some offices in this county. I have been recently informed that we should not follow this procedure, but that they should turn over to the county treasurer all monies collected by them and that they should receive a warrant in full from the county for their salary. If possible, I should like to have an answer in my possession not later than January 15."

The salary of the county clerk is provided for in Section 11811, R. S. Mo. 1929, as amended by Laws of 1937, page 440 and following, and is as follows:

"The clerks of the county courts of this State and their deputies and assistants shall receive for their services annually, to be paid out of the county treasury in monthly install-

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ments at the end of each month by warrant drawn by the county court upon the county treasury, the following sums: In counties having a population of less than 7,500 persons, the sum of \$1,000.00 for themselves and the sum of \$600.00 for deputies and assistants; in counties having a population of 7,500 and less than 10,000 persons, the sum of \$1,100.00 for themselves and the sum of \$900.00 for deputies and assistants; in counties having a population of 10,000 and less than 11,500 persons, the sum of \$1,250.00 for themselves and the sum of \$900.00 for deputies and assistants; in counties having a population of more than 11,500 persons and less than 12,500 persons, the sum of \$1,300.00 for themselves and the sum of \$1,100.00 for deputies and assistants; in counties having a population of 12,500 and less than 15,000 persons, the sum of \$1,500.00 for themselves and the sum of \$1,300.00 for deputies and assistants; in counties having a population of 15,000 and less than 17,500 persons, the sum of \$1,700.00 for themselves and the sum of \$1,600.00 for deputies and assistants; in counties having a population of 17,500 and less than 20,000 persons, the sum of \$1,900.00 for themselves and the sum of \$1,800.00 for deputies and assistants; in counties having a population of 20,000 and less than 25,000 persons, the sum of \$2,100.00 for themselves and the sum of \$2,000.00 for deputies and assistants; in counties having a population of 25,000 and less than 30,000 persons, the sum of \$2,300.00 for themselves and the sum of \$3,000.00 for deputies and assistants; in counties having a population of 30,000 and less than 70,000 persons, the sum of \$2,500.00 for themselves and the sum of \$3,500.00 for deputies and assistants; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3,000.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office, provided such sum for such deputies and assistants shall

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not exceed \$5,00.00; in counties having a population of 80,000 and less than 90,000 persons the sum of \$4,000.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office; in counties having a population of 90,000 and less than 200,000 persons the sum of \$3,600.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office; in counties having a population of 200,000 and less than 300,000 persons, the sum of \$3,000.00 for themselves and a sum not exceeding \$16,000.00 for deputies and assistants, in such of said counties where court is held at more than one place, and in all other such counties the sum not exceeding \$5,000.00 for deputies and assistants. Provided, that the county court in all counties in this State having a population of 15,000 and less than 40,000 persons may allow the county clerks, in addition to the amount herein specified for deputies' or assistants' hire, a further sum not to exceed \$500.00 per annum, to be determined by the county court of such county. Provided, further, that the county court shall determine that the work required to be done by such clerk or clerks demands or requires such extra remuneration. It shall be the duty of the clerks of county courts to charge and collect in all cases every fee accruing to their offices by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month stating on what account such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of such clerk. It shall be the duty of such clerks upon the filing of said report to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk

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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."

And the salary of circuit clerks is provided for in Section 11786, R. S. 1929, as amended by the Laws of Missouri, 1937, page 444 and following, and is as follows:

"The Clerks of the Circuit Courts of this State shall receive for their services annually the following sum: In counties having a population of less than seven thousand five hundred persons, the sum of twelve hundred (\$1200) dollars; in counties having a population of seven thousand five hundred persons and less than ten thousand persons, the sum of fifteen hundred (\$1500) dollars; in counties having a population of ten thousand persons and less than fifteen thousand persons, the sum of seventeen hundred (\$1700) dollars; in counties having a population of fifteen thousand persons and less than seventeen thousand five hundred persons, the sum of nineteen hundred (\$1900) dollars; in counties having a population of seventeen thousand five hundred persons and less than twenty thousand persons, the sum of twenty-one hundred (\$2100) dollars; in counties having a population of twenty thousand persons and less than twenty-five thousand persons, the sum of twenty-three hundred (\$2300) dollars; in counties having a population of twenty-five thousand persons and less than fifty thousand persons, the sum of twenty-five hundred (\$2500) dollars; in counties having a population of fifty thousand persons and less than seventy-five thousand persons, the sum of thirty-six hundred (\$3600) dollars; in counties having a population of seventy-five thousand persons and less than one hundred fifty thousand persons, the sum of four thousand (\$4000) dollars; in counties having a population of one hundred fifty thousand persons and less than four hundred thousand persons, the sum of five thousand (\$5000) dollars; Provided, that in any county wherein the Clerk of the Circuit Court is ex-officio Recorder of Deeds, said offices shall be considered as one for the purpose of this Section; Provided, it shall be the duty of the Circuit Clerk, who is ex-officio Recorder of

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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. (Underscoring ours in the above two sections).

Section 11813 R. S. Mo. 1929, as amended by Laws of Missouri, 1937, page 447, provides method of paying Circuit Clerks, and is as follows:

"The salary of the Clerk, and that of his deputies, and assistants, shall be paid out of the county treasury, in monthly installments, at the end of each month. The accounts of all deputies and assistants shall be stated in their names, respectively, and the correctness thereof shall be certified by the officers, respectively, in whose employment they are.

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The Clerk and his deputies and assistants shall present their accounts to the County Court, and said court shall draw its warrant therefor upon the County Treasurer, to be paid out of any money available in the treasury."

And Section 11814 R. S. Mo. 1929, as amended by the Laws of Missouri, 1937, page 447, pertaining to Circuit Clerks is as follows:

"It shall be the duty of the Clerks of all Circuit Courts to charge and collect for the County, in all cases, every fee accruing to their offices under the provision of Sections 11785, 11787 and 11788, or any other statute, and if such fees be not paid when due by the party liable for the payment, it shall be the duty of the Clerk to forthwith issue a fee bill for same and place such fee bill in the hands of the Sheriff of the proper county, who shall forthwith levy same on the persons liable therefor, or their sureties, as authorized and provided by Section 11776. Such Clerk shall, at the end of each month, file with the County Clerk a report of all fees paid and accruing to his office during such month, the date of accrual to be determined as the date of the final disposition of the case, stating the title of the case or on what account such fees were charged, together with the names of the persons who are liable for same, with the names of all sureties, where security of costs have been required, and which report shall also show what fee bills, if any, have been issued and for what fees and when placed in the hands of the Sheriff for collection, and further stating that, after due diligence, he has been unable to collect the fees reported unpaid and which said report shall be verified by the affidavit of such Clerks. And monthly, such Clerks shall pay into the county treasury the amount of all fees collected by virtue of his office and every Clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law. It shall be the duty of the

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County Court to examine such monthly reports and to require of the Prosecuting Attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, and, to that end, such Prosecuting Attorney shall have authority, at any time, to direct the issuance of any execution or fee bill for costs in any case in which any costs accruing to the County are unpaid." (Underscoring ours).

Your attention is called to the underscoring passages in each of the above quoted sections of the law. In each instance the clerk is directed to turn into the county treasury the fees collected. Also to the fact that the County Clerk and Circuit Clerk are to be paid by warrant drawn upon the treasurer.

In the recent case of *Nodaway County v. Kidder*, 129 S. W. (2d) 857, 344 Mo. 795, a case involving the compensation of a judge of the county court the Supreme Court at 1. c. 860 (S. W. (2d)) said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28, 149 S. W. 638; *King v. Riverland Levee Dist.*, 218 Mo. App. 490, 493, 279 S. W. 195, 196; *State ex rel. Hedeking v. McCracken*, 60 Mo. App. 650, 656." (Underscoring ours).

In the past there have been Statutes which authorized the retention of fees to apply upon the payment of salaries, or for the retention of fees in lieu of salary but at the present time we have no such law affecting these two offices.

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CONCLUSION.

It is the conclusion that the County Clerk and the Circuit Clerk should properly turn in and account for the fees collected by them which they are directed by law to do; that the salary of each should be paid by warrant upon the county treasury, drawn monthly, each for one-twelfth of the annual salary provided for.

Respectfully submitted,

W. C. JACKSON
Assistant Attorney-General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General.

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