

OFFICERS: Deputy County Clerk may attest county warrants.
COUNTY CLERKS:

August 17, 1942

Hon. Robert H. Frost
Prosecuting Attorney
Clinton County
Plattsburg, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of August 11, 1942, which reads as follows:

"At the request of the members of the County Court of Clinton County, I am asking for an opinion on the following set of facts.

"The County Clerk has instructed his deputy not to attest any warrants which have been ordered paid by the County Court for bills which have been duly allowed but insists that he and he only attest them. At times the clerk is absent from his office for days at a time and when the court meets in his absence they cannot pay any bills as he is not there to attest the signature of the presiding judge thereby delaying the payment of claims which are just and many of which are for labor performed by persons who need their money.

"The question which the courts ask is this: Is the County Clerk given the authority to pass upon the allowance

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of claims against the county and has he any authority to refuse to attest a warrant as long as there are funds out of which to pay said warrant and further can the County Court make an order authorizing and directing the deputy County Clerk to attest these warrants."

Clerks of courts are only ministerial officers of the court. It was so held in *Caldwell v. Cockrell*, 217 S. W. 524, 280 Mo. 269; *State ex rel v. Priest*, 152 S. W. (2d) 109, and *Camron v. Nikles*, 151 S. W. (2d) 472.

Under Section 13831 R. S. Missouri, 1939, the county court, when ascertaining any sum of money due from the county, shall order its clerk to issue a warrant and, under Section 13832 R. S. Missouri, 1939, it is the duty of the president of the county court, who is the presiding judge, to sign the warrant, and it is the duty of the clerk to attest the warrant. Under Section 36, Article VI of the Constitution of Missouri, the county court shall have jurisdiction to transact all county and such other business as may be prescribed by law. By virtue of Section 36, Article VI, of the Constitution of Missouri, the legislature enacted Sections 13824 and 13825 R. S. Missouri, 1939, which refer to the auditing, settling of claims, and the issuing of warrants for the payment of the same.

Section 13299 R. S. Missouri, 1939, reads as follows:

"Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least seventeen years of age and have all other qualifications of

their principals and take the like oath, and may in the name of their principals perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies."

Under the above section the deputy clerk may, in the name of his principal, perform the duties of the clerk.

That a deputy may perform the same duties as the clerk under whom he serves, was held in the case of Springer v. McSpadden, 49 Mo. 299, l. c. 300, where the court said:

"The acknowledgment is in due form, and it was taken and certified by the deputy of the circuit clerk in the name of the principal. It is now claimed that the acknowledgment was fatally defective; that the deputy had no right to take the same, and that no one but the principal in his own proper person could perform that act. The statute enacts that every clerk may appoint one or more deputies, who shall be at least seventeen years of age, and have all other qualifications of their principals, and take the like oath, and may, in the name of their principals, perform the duties of a chief clerk. (Wagn. Stat. 259, Sec. 16.) Section 12 of the chapter in relation to conveyances (Wagn. Stat. 275) designates how the certificate of acknowledgment shall be granted, and declares that when granted by the clerk of a court it shall be under the hand of the clerk, and seal of the court

of which he is clerk. Section 13 requires the person making the acknowledgment to be personally known to the officer taking the same, and the succeeding sections provide for proving the identity of the grantor by subscribing witnesses where he is not personally known to the officer.

"Although the statute, when speaking of the duties and powers of the clerk in respect to taking acknowledgments, refers to him alone, yet it by no means follows that he cannot act by deputy. The law, in prescribing the duties of clerks, invariably designates the clerk alone, yet the functions of his office may always be performed by deputy duly appointed.

"No discrimination is made by saying that the clerk shall do certain acts in his own proper person, and that others may be done by the deputy; but the language is broad and explicit, that the deputies may, in the name of their principals, perform the duties of the chief clerk. The deputy has no authority to act in his own name, but when he performs an official act in the name of the principal, it is the act of the principal himself. Taking the acknowledgment of deeds and granting certificates thereon are among the powers expressly devolved upon the clerk, and the deputies, acting in the name of their principals, have the same power as the clerks themselves.

As an historical fact, we know that the deputies have exercised this power in the name of their principals ever since the organization of this State. The practice has been universally acquiesced in by the courts and the profession, and, as far as our knowledge extends, it was never before challenged. To sanction the ruling of the Circuit Court in this case would be to unsettle and destroy the title to nearly all the land in the State."

Wagner's Statute, 1872, Sec. 259, Par. 16, in the above quoted portion, is now Section 13299 R. S. Missouri, 1939.

Also, in the case of In Re: Rothwell, 44 Mo. App. 215, l. c. 221, Par. 1, the court held the authority of the deputy county clerk, unless otherwise limited, is commensurate with that of the officer himself.

The above case was based upon Section 1971 R. S. Missouri, 1889, which is now Section 13299 R. S. Missouri, 1939.

CONCLUSION

It is, therefore, the opinion of this department, that the county clerk has no authority to pass upon the allowance of claims against the county.

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It is further the opinion of this department, that the county clerk has no authority to refuse to attest a warrant, as long as there are funds out of which to pay said warrant.

It is further the opinion of this department, that the county court may make an order authorizing and directing the deputy county clerk to attest warrants, but such an order is not necessary for the reason that deputy county clerks, under the law, are authorized to attest county warrants.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General of Missouri

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