

CIRCUIT CLERKS: Not entitled to fee provided by Sec. 717, R. S. 1939; said section repealed by House Bill 177 passed by 59th General Assembly.

September 13, 1943



Honorable John W. White
Clerk of the Circuit Court and
Ex-Officio Recorder
Washington County
Potosi, Missouri

Dear Mr. White:

Under date of September 8, 1943, you wrote this office requesting an opinion as follows:

"There seems to be a misunderstanding here on the construction of Sec. 717 R. S. 1939, as my office is on a salary basis the County is of the opinion that it would be only a payment to me and from me back to the County in this case, so I would appreciate your opinion on this matter."

Section 717, R. S. Mo. 1939, referred to in your letter, is as follows:

"The clerk shall receive one dollar and fifty cents for his services at each term of the court, in complying with the provisions of the two preceding sections."

The "two preceding sections" referred to in Section 717 are Section 715, which directs the clerk of the circuit court to register the attendance and mileage of jurors, and Section 716, which directs the clerk to issue scrip to the jurors for their attendance and mileage. The fee of \$1.50 per term for these services was fixed by Section 717 and is all that the clerk was permitted to charge and receive for such services. Ford v. Ry. Co., 29 Mo. App. 616.

What is now Section 717, R. S. Mo. 1939, was first enacted in 1855 (R. S. 1855, page 911, Sec. 16) and was approved December 5, 1855. At that time the compensation of the clerk of the circuit court was upon a fee basis (R. S. 1855, pages 764, 765 and 766). Since that time the method of compensating the circuit clerks has been changed several times from a fee basis to salary, back to a fee basis, and then to a salary. Without setting out all of the changes and times when they occurred, attention is called to the last two changes. The 57th General Assembly, in 1933, repealed the act then in force under which the circuit clerks were paid a salary, and placed the clerks upon a fee basis with a fixed maximum. Laws of 1933, page 369. This bill was Committee Substitute for Senate Bill 74. In addition to fixing the maximum amount of fees which could be retained by the clerks of the circuit courts, it also fixed the fees of the county clerks, provided that the last United States Decennial Census should be used as the population of the county, provided for deputies and their pay, and required the clerks to charge, collect and account for all fees accruing to their office, except such fees as were chargeable to their respective counties.

The 59th General Assembly in 1937 again changed the method of paying the circuit clerks. Laws of 1937, page 444. This was House Bill 177, and the provisions of this act are now Sections 13408, 13434, 13435, 13436 and 13437, R. S. Mo. 1939. Section 13408, after fixing the compensation to be paid to the clerks of the circuit courts in the counties falling within the various population brackets, contains the following:

"* * *Provided, it shall be the duty of the circuit clerk, who is ex officio recorder of 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 13426 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 chapter."

Section 13435 provides that the salaries of the clerks and deputies shall be paid out of the county treasury.

Section 13436 provides 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 13407, 13409 and 13410, 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 13398. 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 name 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 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."

Section 13438, which was in effect at the time of the enactment of House Bill 177 by the 59th General Assembly, is as follows:

"It shall be the duty of such clerk, executive or ministerial officer, within fifteen days after such order has been made, to pay into the county treasury the amount of money so ordered to be paid, and take duplicate receipts therefor, one of which he shall file in the office of

the clerk of the county court, who shall immediately charge the treasurer with the amount thereof. If any clerk, executive or ministerial officer shall fail to pay the amount of money so ordered to be paid into the county treasury, and file the receipt therefor, within the said fifteen days, the county court shall immediately cause suit to be commenced on the official bond of such clerk for such amounts of money, together with interest, at the rate of twenty per cent per annum from the end of said fifteen days till paid."

As previously pointed out, when what is now Section 717 as first enacted the clerks of the circuit courts received their compensation in the form of fees collected from litigants and a few fees from the counties, like the one provided for in Section 717, and they are now paid a salary out of the county treasury. The act which placed the clerks of the circuit courts upon a salary basis further requires them to collect and account for every fee accruing to their offices under the provisions of Sections 13407, 13409, 13410, or any other statute. Section 13407 fixes the fees to be charged for the services of the clerk in civil suits. Section 13409 fixes the fees that may be charged in criminal cases, and Section 13410 fixes the fees to be charged in naturalization proceedings. No mention is made of Section 717 but it is another statute fixing a fee for services of circuit clerks and would no doubt be included in the phrase "any other statute."

The first clause of Section 13408 previously mentioned, is as follows:

"The clerks of the circuit courts of this state shall receive for their services annually the following sum: * * * * *."

The compensation fixed is for services, not one class of services but all classes of services in connection with their duties as clerks of the courts. The registering of jurors, both grand and petit, who are used in the circuit court, and the issuing of scrip to them, are duties which rightfully should be performed by the clerk of the court in which the jurors are used and would ordinarily be considered services which were included under the word "services" as used in Section 13408.

Section 717 is much older and fixed a fee for only one service.

The purpose of construing statutes is to ascertain the intention of the Legislature in enacting the bills. *Thompson v. City of Lamar*, 17 S. W. (2d) 960, 322 Mo. 514; *State v. Toombs*, 25 S. W. (2d) 10, 324 Mo. 819; *Artophone Corp., v. Coale*, 133 S. W. (2d) 343, 345 Mo. 344.

By using the word "services" it would seem to indicate the legislative intention was to have the compensation fixed to cover all services rendered by the clerks in connection with the holding of courts.

If it was the legislative intention that the salary fixed by Section 13408 should be in full for all services, as this section and the other sections enacted at the same time contain no words of repeal, we are in the situation of having a general statute fixing a salary for the performance of all services and a special section of the statute fixing a small fee for one service.

Ordinarily a special statute will prevail over a general one and remain in force when a later general act is passed, but it is well established that while implied repeals are not favored, a general act which clearly shows the legislative intent to repeal a special act, will take precedence and repeal by implication the special act. *Schott v. Continental Auto Ins. Underwriters*, 31 S. W. (2) 7, 1. c. 11:

"Appellant's argument in support of its contention under this head seems to run as follows: The act of 1925 (hereinafter called the act) is a general law; said article 13 relating to reciprocal and interinsurance contracts, including said section 6385, is a special law; section 6385 provides that no law of this state relating to insurance shall apply to the contracts of companies operating as reciprocals; the act does not in express terms repeal or amend section 6385; and a general law does not repeal a prior special law by implication. 'It is * * *

true that the presumption against implied repeals has peculiar and special force when the conflicting provisions which are thought to work a repeal are contained in a local or special act and a later general act. The presumption is that the special is intended to remain in force as an exception to the general act.' 25 R. C. L. 927; Sec. 177. But there is no rule which prohibits the repeal of a special act by a general one, the question being always one of intention. And there can be no doubt but that it was the legislative intention that the act should apply to contracts of reciprocal companies; by its express terms they are made subject to its provisions. The effect of the act in that respect, therefore, is to ingraft upon said section 6385 another exception.

"But it is said that if the act was intended to be in any respect amendatory of section 6385, it is to that extent void because violative of section 34, article 4, of the Constitution, in that it does not designate the words inserted and then set forth in full the section as amended. As to this it is sufficient to say that the constitutional provision mentioned has no application to repeals or amendments by implication. *Dorris Motor Car Co. v. Colburn*, 307 Mo. 137, 155, 270 S. W. 339."

And again, in *O'Malley v. Prudential Casualty & Surety Co.*, 80 S. W. (2d) 896, the following quotation is found at l. c. 897:

"We do not think that any such conclusion follows. Aside from the general proposition heretofore pointed out, that the insurance statutes were intended to be exclusive as to all matters to which they relate, we are also confronted with the general rule of statutory construction that a general statute will not be held to repeal a former statute

special in its nature unless the intent to repeal is manifest, or the two acts are so patently inconsistent that they cannot stand together. State ex rel. State Tax Commission v. Crawford, 303 Mo. 652, 262 S. W. 341; Hurlburt v. Bush, 284 Mo. 397, 224 S. W. 323; Folk v. City of St. Louis, 250 Mo. 116, 157 S. W. 71; State ex rel. McDowell v. Smith (Mo. Sup.) 67 S. W. (2d) 50."

The rule as pointed out in the O'Malley case seems particularly applicable to the situation here. For, if there was no repeal of Section 717 by the passage of the act of 1937, there exists one of two situations: first, there is a salary paid for all the services as clerk and then a fee fixed for the performance of one service; or, second, a salary fixed for the duties of the office and the officer required to collect a fee for one service from the county and immediately turn it back to the county. Either situation would be ridiculous and absurd.

In interpreting a statute the results to be arrived at may be considered. Bragg City Road District v. Johnson, 20 S. W. (2d) 22.

Statutes shall be given a sensible construction to effectuate the legislative intention and avoid unjust or absurd conclusions or results. Marler v. Marler's Estate, 104 S. W. (2d) 733, l. c. 736:

"A statute will not be given a construction which will make it unreasonable or which will result in an absurdity. Stack v. General Baking Company, 283 Mo. 396, loc. cit. 410, 223 S. W. 89, and cases cited; Johnston v. Ragan et al., 265 Mo. 420, 178 S. W. 159; State v. Irvine, 335 Mo. 261, 72 S. W. (2d) 96, 93 A. L. R. 232."

And in the case of Chrisman v. Terminal R. Ass'n., 157 S. W. (2d) 230, l. c. 234, the following statement is found:

"Statutes should receive a sensible construction, such as will effectuate the

legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. * * * "

Conclusion

From the foregoing, the conclusion is reached that the passage of House Bill 177 by the 59th General Assembly, repealed what is now printed in the statutes as Section 717, R. S. Mo. 1939; that the circuit clerk is not entitled to receive the fee provided for therein and that he need not collect it from the county and return it to the county.

Respectfully submitted,

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APPROVED:

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