

PROBATE JUDGE: Cannot secure additional compensation for performing duties of office where there is no special statute authorizing it.

February 5, 1944



Honorable Joseph V. Massey
Probate Judge
Carter County
Van Buren, Missouri

Dear Judge Massey:

We are in receipt of your request for an opinion, dated February 3, 1944, which reads as follows:

"Please inform me if I may collect from the County Court the money I pay out once every year to have my probate records brought up to date. As I don't get much salary and therefore cannot hire a clerk, I have to hire it done once at the end of every year. The County Court asked me to write you in regard to same."

Article VI, Section 35, of the Missouri Constitution provides:

"Probate courts shall be uniform in their organization, jurisdiction, duties and practice, except that a separate clerk may be provided for, or the judge may be required to act, ex officio, as his own clerk."

Section 2440, R. S. Missouri, 1939, provides:

"The judge of probate is required to act ex officio as his own clerk, * * * Pro-

vided, that any judge of probate may, by an entry of record in said court, appoint a separate clerk, who shall be paid by said judge and shall hold his office at the pleasure of the judge.
* * * "

Inasmuch as you have appointed no clerk, you are, therefore, regarded in the eyes of the law as ex officio clerk and must perform the duties of clerk.

Section 13295, R. S. Missouri, 1939, provides:

"Every clerk shall record the judgments, rules, orders and other proceedings of the court, and make a complete alphabetical index thereto; issue and attest all process when required by law and affix the seal of his office thereto, or if none be provided, then his private seal; keep a perfect account of all moneys coming into his hands on account of costs or otherwise, and punctually pay over the same: * * * "

Section 13837, R. S. Missouri, 1939, provides:

"It shall be the duty of all clerks of courts of record to keep just accounts of all fines, penalties, forfeitures and judgments rendered, imposed or accruing, in favor of any county, ready at all times for the inspection of the judges of their respective courts."

The statute relating to fees or salaries of probate judges is Section 13404, R. S. Missouri, 1939, which provides the fees a judge may charge for certain specific acts.

Section 13404a, Laws of 1943, page 868, provides a minimum salary for probate judges in counties of less than 19,000 population, and provides for a monthly report to the county

clerk of all fees actually collected. This act does not provide for any special compensation for preparing these reports.

There is, therefore, no special statutory provision for compensation for the preparation of reports or records in connection with the duties of a probate judge acting as ex officio clerk or for a clerk.

In *Nodaway County v. Kidder*, 129 S. W. (2d) 857, 1. c. 860, it is stated:

"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.
* * * *

"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; * * * *."

In the case of *City of Indianapolis v. Lampkin*, 11 N. E. 833, it was held that a city clerk could not be paid extra compensation for preparing an index of council proceedings since such work was an incident to the office and was an official duty.

CONCLUSION

It is, therefore, the opinion of this office that a probate judge may not collect from the county court an additional

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amount over and above his regular statutory salary or fees for the preparation of records where there is no special statute authorizing it.

Respectfully submitted

ROBERT J. FLANAGAN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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