

COUNTY CLERK; Certain duties in connection with the office of county clerk.

FILED

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April 13, 1945

Honorable Robert H. Frost
Prosecuting Attorney
Plattsburg, Missouri

Dear Mr. Frost:

Your letter of February 2, 1945, requesting an opinion of this department on eight different questions, is as follows:

"At the request of the County Court of Clinton County, Missouri, I have several questions relative to the duties and actions of the County Clerk that I wish your opinion.

"First: Does the County Clerk have authority to insert into the County Court Record Book, opinions of his own and statements in regards to advice that he gives the court.

"Second: Does the County Court have authority to order the County Clerk to strike from the records entries made by the county clerk without order from the Court.

"Third: Does the County Clerk have any authority to keep certain public records locked in private boxes where they cannot be procured for the Court when the Clerk is not present.

"Fourth: Does a County Clerk have any authority to issue beer or any other licenses without first obtaining the approval of the Court.

"Fifth: Does the County Clerk have any authority to open mail addressed to the County Court or to individual members of the Court.

"Sixth: Is the County Clerk charged with any duty in regards to elections that requires him to visit the various election precincts either on election day or before, and if he so visits these precincts is there any provision for the Court paying him for expenses incurred.

"Seventh: Is not the County Clerk a clerk of the County Court and is without any responsibility or authority in the operation of the County government.

"Eighth: What recourse does the County Court have if the County Clerk refuses to comply with an order of the Court."

These questions will be taken up in numerical order.

1.

"Does the County Clerk have authority to insert into the County Court Record Book, opinions of his own and statements in regards to advice that he gives the court?"

Section 7, Article VI, Constitution of Missouri, 1945, provides:

"In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

The county clerk has only such authority to insert into the County Court Record Book such entries as directed by law and ordered by the court, his duties and authority being purely statutory and none other.

A part of his duties is prescribed by Sections 1993, 1995, 2507, 13295, 13298 and 14566, R. S. Mo. 1939.

Section 13295, R. S. Mo. 1939, provides as follows:

"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: Provided, that where the clerk of the circuit court is a party, plaintiff or defendant (whether singly or jointly with others) to a suit or action, the writ of summons and all other process shall be issued by the clerk of the county court, the reason therefor being noted on said process, and said latter named clerk shall, on the trial of said cause, act as temporary clerk of the circuit court and otherwise perform in said cause all the duties of the circuit court clerk."

There are numerous other sections relating to the duties of the county clerk.

2.

"Does the County Court have authority to order the County Clerk to strike from the records entries made by the county clerk without order from the Court."

The county clerk is an officer of the county court. Although elected by the people, he is the clerk of said court and

his duties and limitations are prescribed by statute, and he cannot legally go beyond the statutes in his official capacity.

On this second point, the clerk is subordinate to the county court and the county court may order the clerk to strike from the records any entries made by him that were not authorized by the court or not legally required of the clerk to be entered. Such authority could be derived by the same rule as laid down in the case of Johnson v. Underwood, 22 S. W. (2d) 133, 324 Mo. 578, wherein it is said that, "County Court is 'court of record' within law authorizing courts of records to set aside orders showing irregularity."

3.

"Does the County Clerk have any authority to keep certain public records locked in private boxes where they cannot be procured for the Court when the Clerk is not present."

As pointed out above the statutes require the county clerk to file and keep certain records. Such records, therefore, are public records. In the case of State ex rel. v. Henderson, 169 S. W. (2d) 389, 392, 350 Mo. 968, the court said:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it."

4.

"Does a County Clerk have any authority to issue beer or any other licenses without first obtaining the approval of the Court."

The matter of the issuance of licenses is regulated by various statutes. It is necessary to refer to them to determine whether the county clerk has any authority in connection with the issuance of such licenses.

Section 4904, R. S. Mo. 1939, which deals with intoxicating liquor licenses, provides that the holder of a liquor permit or license shall pay into the county treasury an amount to be determined by the county court. No authority is given the county clerk to determine the amounts to be paid or to issue any license.

Likewise, Section 8298, R. S. Mo. 1939, provides that,

"The clerk of the county court of such county shall issue as many blank licenses for money brokers or exchange dealers as the court may direct. * * *"

It will be seen by the foregoing statute that the county court directs the issuance of the licenses and that the duties of the clerk are ministerial.

Likewise, Section 15287, R. S. Mo. 1939, deals with the issuance of licenses to operate a ferry. Said section provides that the petition for such license shall be made to the county court and that if the court determines that the license should be granted, it should order the clerk to issue the license.

These, and similar statutes, all clearly show that the duties of the clerk with respect to issuing licenses are merely ministerial in carrying out the orders of the county court.

5.

"Does the County Clerk have any authority to open mail addressed to the County Court or to individual members of the Court."

It is criminal to open mail of others for the purpose of prying into its contents. Corpus Juris, Vol. 49, p. 1230, Sec. 285, says:

"By statute the taking of a letter or other mail matter before delivery to the

addressee with an intent to obstruct correspondence or pry into the secrets or business of another or the opening, secreting, embezzlement, or destruction of the same is made an offense. To constitute the offense, the taking must be wrongful or unlawful--with criminal intent--and this intent must exist at the time of the taking. It is not an element of the offense that at the time of the opening the letter was in the custody of any postmaster, carrier, or other person having charge of it. The offense intended to be defined, the other circumstances existing, is complete whether the letter contained anything of value, or not."

Section 4747, R. S. Mo. 1939, provides the following:

"If any person shall willfully open or read, or cause to be read, any sealed letter not addressed to himself, without authority to do so from the writer thereof, or from the person to whom it is addressed, he shall, on conviction, be adjudged guilty of a misdemeanor."

6.

"Is the County Clerk charged with any duty in regards to elections that requires him to visit the various election precincts either on election day or before, and if he so visits these precincts is there any provision for the Court paying him for expenses incurred."

Section 11596, R. S. Mo. 1939, provides that in cases where propositions are certified to him by the secretary of state to be voted upon, he "shall prepare and distribute ballots * *." We do not think this would mean that the county clerk is required personally to take the ballots and deliver them to each and every voting precinct, but means that he should prepare them and then distribute them in such a way that the voters will have them for use at the proper time and place, and such distribution could be

made in any manner which would accomplish that purpose. This section does not necessarily require the clerk to personally deliver them but to see that they are distributed, and does not make any provision for him to visit the various election precincts either on election day or before, nor for the payment of any expenses incurred by him personally. We do not find any other statutes which provide fees for his services in this connection.

Section 11598, R. S. Mo. 1939, provides the method of delivering of ballots to the judges of election for public officers. It provides that,

"* * * the clerk of the county court shall cause to be delivered to the judges of election of each election district which is within the county in which the election is to be held, the number of ballots printed for such district, said delivery to be made by the sheriff of the county, his deputy, or constable of the township, who shall be allowed a reasonable compensation for his services, to be provided for by the county court."

7.

"Is not the County Clerk a clerk of the County Court and is without any responsibility or authority in the operation of the County government."

The county clerk is the clerk of the county court. The duties, rights, powers and authority of the county clerk are prescribed by statute and he cannot go beyond the statutory law in the exercise of the same. The county clerk is not responsible for the operation of the county government nor does he have any authority in the same, except for such responsibilities and authority as is prescribed by statute.

8.

"What recourse does the County Court have if the County Clerk refuses to comply with an order of the Court."

As to the eighth question presented for our opinion, we think mandamus would be the proper action to be taken against a county clerk for refusing to comply with an order of the court. State ex rel. Gay v. Reyburn, 138 S. W. 79, 158 Mo. App. 172.

If the court can mandamus the clerk in their right to inspect the books, by the same rule they should have the same right to compel the clerk to comply with the orders of the court.

(This same rule should apply to the greater number of questions asked in the opinion relating to the powers of the court over the clerk, provided the court first makes the proper order to be complied with by the clerk.)

Conclusion

It is the opinion of this department that:

(1) the county clerk does not have the right to insert in the county record books opinions of his own and statements regarding advice he gives to the county court;

(2) the county court has authority to order the county clerk to strike from its records entries made by the county clerk without the order of the court;

(3) the county clerk does not have authority to keep public records locked in private boxes where they cannot be procured at all reasonable hours;

(4) the county clerk does not have authority to issue beer or other licenses except under order and approval of the court;

(5) the county clerk does not have authority to open mail of the county court or of individual members of the court,

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unless so directed;

(6) the county clerk does not have any authority to visit election precincts either on or before election day and to charge for his expenses incurred in doing so;

(7) the county clerk is clerk of the county court elected by the people, and his responsibility and authority in the operation of the county government is limited to that prescribed by statute; and

(8) mandamus would be the procedure to compel the county clerk to comply with the order of the county court.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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