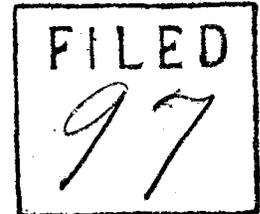


*Copy to  
J. Smith*

COUNTY CLERK: Cost deposits in cases in which costs are unclaimed should be turned over to the county treasurer by the circuit clerk. Cost deposits in cases in which there is an insufficient amount to fully pay all those entitled thereto should be distributed pro rata.

July 19, 1947



*7/23*

Honorable Robert P. C. Wilson III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"I am writing this request for opinion at the instance of Mr. Fred R. Rollins, Circuit Clerk of Platte County, Mo.

"On January 1, 1943, Mr. E. R. Clarke, the predecessor of Mr. Rollins, reported and paid over to Mr. Rollins the amount of \$442.32, representing 'Open Items'. Mr. Rollins still holds that sum. Is it his duty to pay that sum over to the County Treasurer as provided in Section 13446, R. S. Mo. 1939? If not, what shall he do with it?

"Further, on January 1, 1943, Mr. Clarke reported and turned over to Mr. Rollins the sum of \$600.63, representing cost deposits in various cases. Mr. Rollins still holds that sum. Is it his duty to pro rate the costs in each of the reported cases remaining cases and certify same to the County Treasurer to be paid out by him as provided in Sections 13447 and 13448 R. S. Mo. 1939? If not, what shall he do with the sum?"

We are also in receipt of a letter you wrote in answer to our letter of inquiry, in which you state that the \$442.32 "Open Items" represents money deposited as costs in suits in which there is sufficient money to pay the costs of such suits,

and that the \$600.63 represents moneys which were deposited in various cases which have been finally decided and in which there is insufficient money to pay the entire costs of the cases.

Section 13446, R. S. Mo. 1939, provides as follows:

"It shall be the duty of each sheriff, marshal, coroner, clerk of the courts of record, and other officers, on the first day of January and the first day of July in each year, to pay over all fees in their hands belonging to others to the treasurer of the county, with the name and amount belonging to each person, date when collected and in what case, taking from the treasurer duplicate receipts therefor, one of which the officer shall file with the clerk of the county court, who shall immediately charge the treasurer with the same."

Under the provisions of this section, the circuit clerk should pay to the treasurer of the county the \$442.32 which was turned over to him by his predecessor.

With regard to the payment of the \$600.63 which was deposited in the cases and in which there is insufficient money to pay the entire costs of such cases, we are enclosing an excerpt from an official opinion of this department rendered under date of May 22, 1939, to Hon. John E. Short, Circuit Clerk of Ray County. The conclusion reached in that opinion, we believe, is decisive of the disposition to be made of the \$600.63.

#### CONCLUSION

It is the opinion of this department that the sum of \$442.32 turned over to the present circuit clerk by his predecessor in office, which represents cost deposits in cases in which there is sufficient money deposited to pay all costs, should be turned over by the circuit clerk to the treasurer of the county.

The cost deposits amounting to \$600.63, which were deposited in cases which have been fully decided and in which there is an

Honorable Robert P. C. Wilson III -3-

insufficient amount to pay the entire costs of the cases, should be paid pro rata to the persons entitled thereto.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CBB:HR

EXCERPTS

From Opinion rendered to Hon. John E. Short, Circuit  
Clerk of Ray County, Richmond, Missouri, under  
date of May 22, 1939.

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"P.S. Where the Clerk prorates the amount that he has and cannot collect the full amount should the proration include all parties who are entitled to a fee or use the amount collected for officers of the court only."

\* \* \* \* \*

"In your next question you ask whether a clerk when he cannot collect the full amount of costs should pro rate the amount he does have on hand with all of the parties entitled to fees. It is our opinion that the clerk should pro rate such funds among all parties entitled to fees, including yourself, the sheriff, witnesses and jurors. There is no statute in this state which gives any of these persons a prior claim to any of the deposits on hand or amounts collected for the payment of costs. None of the appellate courts, as far as we have been able to determine have ever passed on this question, but since the law does not give any prior claim to any of such parties, it is only equitable and fair that the same should be pro rated.

Respectfully submitted,

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General "