

CIRCUIT CLERKS: Circuit clerk's and recorder's fees
RECORDERS: collected under provisions of House
FEES: Bill No. 65 of the 64th General Assembly
must be turned into the county treasury.

*Copy to
J. Smith
Lately*

July 16, 1948

FILED
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Mr. B. E. Ragland
Chief Clerk
State Auditor's Office
Jefferson City, Missouri

7-23

Dear Sir:

This is in reply to your request for an opinion, which reads as follows:

"We have received several requests for information from circuit clerks and recorders concerning the fees to be collected for performing the duties outlined in House Bill No. 65, passed by the 64th General Assembly and approved May 10, 1948.

"Will you kindly give us an opinion as to whether or not the fees provided for by House Bill No. 65 are accountable fees?"

The fees of which you speak above are contained in Sections 35 and 37 of House Bill No. 65, and read as follows:

"Section 35. Every officer authorized to issue marriage licenses shall be paid a recording fee of fifty cents for each marriage certificate filed with him and reported by him to the state registrar. The recording fee shall be paid by the applicant for the license and be collected together with the fee for the license.

"Section 37. The clerk of the court shall be paid fifty cents for each certificate prepared and forwarded by him to the state

registrar as above provided which shall be taxed as costs in the case in which the decree was rendered."

In the above-quoted sections you will notice that the fees provided for have not been designated by the Legislature as nonaccountable fees. In the absence of such direction, we must look to see if they can be so considered by other general laws of the Legislature.

In counties of the second class the Legislature has provided by Section 13408.2, Mo. R.S.A., 1939, for the clerk of the circuit court to receive as compensation for his services a sum of \$4,000 annually.

Section 13408.7, Mo. R.S.A., 1939, provides that "The clerk of the circuit court shall pay monthly into the county treasury the amount of all fees collected by virtue of his office and due the county, and every clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law."

Section 13547.220, Mo. R.S.A., 1939, establishes compensation not to exceed \$4,000 annually for recorders in counties of the second class, paid out of the fees received by him.

Section 13547.221, Mo. R.S.A., 1939, provides that "All fees, charges and moneys collected by the recorder of deeds in excess of the amount to which he is entitled for compensation as herein provided, shall be the property of the county."

In counties of the third class wherein there is a separate circuit clerk and recorder, Section 13408.8, Mo. R.S.A., 1939, provides for an annual salary for the circuit clerk, while Section 13408.10, Mo. R.S.A., 1939, provides: "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."

Section 13187.1, Mo. R.S.A., 1939, provides: "The recorder in counties of the third class, wherein there shall be a separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and

all fees received by him, over and above the sum of \$4000 except those set out in Section 2 hereof, for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury."

The exception provided for in Section 13187.2, Mo. R.S.A., 1939, does not pertain to House Bill No. 65.

Section 13408.13, Mo. R.S.A., 1939, provides for an annual salary for the circuit clerk and recorder in counties of the third class wherein the two offices have been combined, while Sections 13408.15 and 13408.16, Mo. R.S.A., 1939, provide that the fees accruing to the office of recorder and circuit clerk shall be paid into the county treasury monthly.

Section 13408.20, Mo. R.S.A., 1939, provides an annual salary for the circuit clerk and recorder in counties of the fourth class, while Sections 13408.22 and 13408.23, Mo. R.S.A., 1939, provide that all fees accruing to the office of recorder and circuit clerk shall be paid monthly to the county treasurer.

In the laws mentioned above there has been expressly excluded all fees earned by the circuit clerk in cases of change of venue from other counties. Thus, it is seen that the Legislature has prescribed that the method of payment of recorders and circuit clerks shall be by salary, and it has abolished the fee system with an exception in the cases of change of venue and that provided for in Section 13187.1, supra.

It has long been the law in this state that "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." *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 860.

In the instant problem before us, the Legislature has provided a manner of compensation for recorders and circuit clerks, i.e., by annual salary. In adopting this manner of payment it has provided for an exception in the case of fees derived in cases of change of venue.

It has long been a rule for the construction of statutes that the express mention of one thing in a statute implies the exclusion of another thing, generally called the doctrine "expressio unius est exclusio alterius." It is also a rule of construction of statutes that the Legislature is presumed to know the state of law as it exists at the time of the passage of an act and also the construction which has been placed upon the law by the courts. *Howlett v. Social Security Commission*, 149 S.W. (2d) 806, 811.

In House Bill No. 65 the Legislature has provided additional duties for recorders and circuit clerks. In the case of *State v. Nolte*, 180 S.W. (2d) 740, the court said:

" * * * Extra compensation for extra services must be expressly authorized. See *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. 2d 857. Extra duties do not automatically bring extra compensation. *Bates v. St. Louis*, 153 Mo. 18, 54 S.W. 439, 77 Am. St. Rep. 701; *Gannon v. Lafayette County*, 76 Mo. 675."

Therefore, in the construction of House Bill No. 65 it must be presumed that the Legislature knew that the imposition of the extra duties upon the recorders and circuit clerks would not automatically bring extra compensation to them personally. If the Legislature had so intended, it could have expressly provided therein for the extra compensation to be treated in the same manner as the fees in cases of change of venue. It is not for us to determine the propriety of matters which properly pertain to the legislative branch of the government. If the Legislature desires to burden recorders and circuit clerks with additional duties without additional compensation, that is the prerogative of the Legislature.

Conclusion.

It is the opinion of this department that the Legislature, by enacting House Bill No. 65 and failing to specifically provide that the fee should accrue personally to the recorders and circuit clerks, meant that these fees should be treated as others and turned into the county treasury as provided by law.

Respectfully submitted,

APPROVED:

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