

COUNTY CLERKS:
CONSTITUTIONAL LAW:

Sec. 11238, H. B. No. 126, repeals fee provisions of Sec. 11049, Laws of Mo. 1947, Vol. II, p. 429. Fees provided in H. B. No. 126 can be retained by incumbent county clerks of third and fourth class counties.

Missouri

November 23, 1949

FILED
7/

11/25/49
Missouri copies available 7-23-54

Hon. W. H. Holmes
State Auditor
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"Please advise this department with an official opinion on the following questions:

"1. Does H. B. 126, 65th. General Assembly, repeal Section 11049, 2L47, page 429, or are county clerks entitled to receive for the compensation of ten cents per hundred words and figures extending tax books under Section 11049 and also the three cents per name for the like services under H. B. 126?

"2. Inasmuch as H. B. 126 becomes effective October 14, 1949 and the 1949 tax books are in process of preparation at that time, would the county clerks be entitled to draw compensation under this act for the 1949 tax books?"

House Bill No. 126 of the Sixty-fifth General Assembly provides in part as follows:

"Section 11238. The following fees and compensation shall be allowed to and retained by the several officers and persons herein named, as unaccountable fees, in addition to the salary and other fees now provided by law, for services rendered under the provisions of the chapter, viz.:

I. To Clerks.--To the clerk of the county court, for extending the tax on the

11

assessment book, three cents for each name, to be paid by the state and county in proportion to the number of tax columns used by each."

* * * * *

"All laws, or parts of laws in conflict or inconsistent herewith are hereby repealed."

Section 11048, Laws of Missouri, 1945, page 1958, provides as follows:

"The assessor's book shall be corrected and adjusted not later than September 1 of each year. The clerk of the county court in each county, upon receipt of the certificates of the rates levied by the county court, school districts and other political subdivisions authorized by law to make levies or required by law to certify levies to the county court or clerk of the county court, shall then extend the taxes in the assessor's book, in proper columns prepared for such extensions, according to the rates levied; and shall on or before the 31st day of October of each year deliver the tax book with the rates extended therein to the collector. The assessor's book, with the taxes so extended therein, shall be authenticated by the seal of the Court as the Tax Book for the use of the Collector; and when the assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each volume shall be authenticated by the clerk with the seal of the court. And upon a failure to make out such extension of taxes in the assessor's book or books, as the case may be, and deliver same to the collector not later than October 31, the county court shall deduct twenty per centum from the amount of fees which may be due the clerk for making such extension, and such assessor's book, with the taxes so extended therein, shall be called the 'Tax Book.'"

Section 11049, Laws of Missouri, 1947, Volume II, page 429, provides in part as follows:

" * * * The clerks of the county courts shall receive ten cents per hundred words

and figures for all words and figures extended by him in making out the tax book, one-half thereof to be paid by the state and other half by the counties, respectively:
* * *

It will be noted that both Section 11238 of House Bill No. 126 and Section 11049, Laws of Missouri, 1947, Vol. II, page 439, provide fees to the county clerk for doing exactly the same thing, to wit, for extending the taxes on the assessor's tax book. To understand this apparent conflict we must look to the history of these acts. These laws appeared for the first time in what is substantially their present form in 1866. What is now Section 11048 was Section 51, Laws of Missouri, 1866, page 137, and provided that the clerk of the county courts should extend the taxes on the assessor's books and "within ninety days thereafter make a fair copy thereof, authenticated by the seal of the court for the use of the collector, and upon a failure to make out and deliver to the collector such copy in the time specified, the county court shall deduct twenty per centum from the amount of fees which may be due the clerk for making such copy, and such copy of the assessor's book shall be called the 'tax book.'" Section 52 of the act, which is now Section 11049, provided that the clerk would receive ten cents per hundred words and figures for making out and copying the tax book, one-half to be paid by the state and the other half by the counties, respectively. What is now Section 11238 will be found in Section 11138, Laws of Missouri, 1866, page 165, and is identical with the wording of House Bill No. 126, except for the provision that the fees may be retained by the several officers and persons as accountable fees. This provision read as follows:

"The following fees and compensation shall be allowed to the several officers and persons herein named, for services rendered under the provisions of this act, viz:

"To Clerks--1st. To the clerk of the county court, for extending the tax (on the tax) book, three cents for each name, to be paid by the State and county in proportion to the number of tax columns used by each."

Therefore, it will be seen that, under the law as it was first passed, the county clerk received a fee of three cents for extending the taxes and a further fee of ten cents for each hundred words and figures for preparing a copy of the assessor's book, which copy the county clerk then turned over to the collector as the tax book.

These sections remained substantially unchanged until 1933 when what is now Section 11048 was amended by doing away with the requirement that the clerk of the county court would make a fair copy of the assessor's books, which copy was to be turned over to the collector, and providing that the assessor's book itself, with the taxes extended, was to be turned over to the collector. Laws of Missouri, 1933, page 421. This 1933 amendment is Section 11048 as it is today. What is now Section 11049 was also amended in 1933, and the fee of ten cents per hundred words and figures for making the copy of the assessor's book was changed to read as it does today, to wit, ten cents per hundred words and figures for all words and figures extended by him in making out the tax book. Laws of Missouri, 1933, page 421.

From this review it will be seen that until 1933 the county clerk received both fees because they were paid for two different and distinct duties. However, in 1933 the duty of preparing a copy of the assessor's book was eliminated and a fee of ten cents per hundred words and figures was granted for the clerk's work in extending the taxes. Since this law was in conflict with the earlier statute which provided a fee of three cents per name for doing exactly the same thing, then the 1933 law, since it was a later law, repealed the earlier section by implication. *State ex inf. Taylor v. American Insurance Co.*, 355 Mo. 1053, 200 S.W. (2d) 1. This fee of ten cents per hundred words and figures was the proper and only fee that would be allowed to county clerks until these sections were changed again.

In 1945 the Legislature repealed and re-enacted Sections 11048, 11049 and 11238. The law at this period becomes greatly confused, but a review of these changes must be made in this opinion. The first amendment was that of Sections 11048 and 11049, which amendment went into effect by reason of emergency clause on November 30, 1945. This amendment was negligible, the only changes being that in Section 11048 it provided that the assessor's books should be corrected not later than September 1 of each year, and the change in Section 11049 being the substitution of the State Tax Commission for the Auditor as the person to whom the record should be forwarded. Laws of Missouri, 1945, page 1817.

Section 11238 was also amended at the same session, which law went into effect January 25, 1946 (Laws of Missouri, 1945, page 1823). This amendment added the following provision at the beginning of the section: "Except in counties having a population in excess of 100,000." This section was again

amended at that session, and this act went into effect July 3, 1946 (Laws of Missouri, 1945, page 1956). This last amendment eliminated the provision exempting counties having a population in excess of 100,000 and added the following provision: "Provided that in counties of the first and second class and the City of St. Louis all fees and compensation allowed in this section shall be paid into the county or city treasury, as provided by law, by the several officers and persons herein named who shall have received any such fees and compensation."

The General Assembly also amended Section 11048 again to the form that it is today, and this law went into effect July 6, 1946 (Laws of Missouri, 1945, page 1958). In 1947, Section 11049 was repealed and re-enacted, the only change being that the Director of Revenue was substituted for the State Tax Commission as the proper agency to furnish the blanks and instructions and to whom the statement should be forwarded (Laws of Missouri, 1947, Vol. II, page 429).

From a reading of the above it will be seen that on November 30, 1945, the county clerks were entitled to a fee of ten cents per hundred words and figures for extending the tax book. From that time until the passage of House Bill No. 126 by the present General Assembly the fee that was permitted the county clerks for this duty has been in a state of flux and confusion. However, in view of the fact that House Bill No. 126 is the latest legislative pronouncement upon this matter, the fee provided therein, that is, three cents for each name, is the fee that is permitted to be charged by the present clerks and the fee provided for in Section 11049 may not be allowed them.

We next take up the question as to whether this is an accountable fee or whether the county clerks are entitled to retain the fee for their work in extending the tax books.

The law providing for fees of county clerks for performance of the duties set out in this section have been in the statutes since 1865. Until 1937 county clerks were allowed to retain as their compensation fees earned up to certain amounts, depending on the population of the county. County clerks were placed on a salary basis by Section 11011, Laws of Missouri, 1937, page 441, which repealed and re-enacted that section of the Laws of 1933, page 370.

Section 11811, supra, contained the following provision:

" * * * It shall be the duty of the clerks of county courts to charge and collect in all cases every fee accruing to their offices

by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month stating on what account such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of such clerk. It shall be the duty of such clerks upon the filing of said report to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk 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."

The Sixty-third General Assembly, in order to carry out the provisions of the Missouri Constitution of 1945 (Sections 8 and 11, Article VI), in respect to classification of counties and compensation of officers therein, carried the foregoing provision of the 1937 salary act over and re-enacted the same so that it would apply to counties according to classification.

The law applicable to salaries of county clerks in first class counties is found in Sections 2, 3 and 4, page 575, Laws of Missouri, 1945. Section 4 thereof reads as follows:

"The compensation hereinabove provided, shall be paid in monthly installments on the first day of each month, out of the county treasury, and shall be in lieu of and include all salaries, including, but not limited to, all salaries, per diem, and any other compensation whatsoever received or provided for as member of board of parole, board of equalization, board of zoning adjustment, board of jury commissioners, or any other board, bureau or commission established by law, and any or all fees, emoluments or grants for all duties performed and required of such officer by law, any statute or provision of law to the contrary notwithstanding."

This section specifically states that the salary provided for in Sections 2 and 3, mentioned above, shall be in lieu of any and all fees, emoluments or grants for all duties performed and required of such officer by law, any statute or provision of the law to the contrary notwithstanding.

Section 3, page 1559, Laws of Missouri, 1945, relating to second class counties, reads as follows:

"It shall be the duty of the clerk of the county court to charge, receive and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating on what account such fees were charged and collected, together with the names of all persons paying the same or who are liable for the same, and said report shall be verified by said county clerk. It shall also be the duty of such clerk upon the filing of said report forthwith to pay over to the county treasury, all moneys collected by him during the month, due the county, and required to be shown in said monthly report. He shall take a duplicate receipt therefor and one shall be filed promptly in his office, and every clerk 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."

Section 7, Laws of Missouri, 1945, page 1547, relating to counties of the third class, reads as follows:

"It shall be the duty of the clerk of the county court in counties of the third class to charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county including his per diem as secretary of the board of equalization. Such clerks shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating on what act said fees were charged and collected, together with the names of the persons paying

or who are liable for same, which report shall be verified by the affidavits of such clerk. It shall be the duty of such clerk 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 said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk 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."

Section 7, Laws of Missouri, 1945, page 1526, relating to counties of the fourth class, reads as follows:

"It shall be the duty of the clerk of the county court in counties of the fourth class to charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county, and such clerks shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating for what act said fees were charged and collected, together with the names of the persons paying or who are liable for same, which report shall be verified by the affidavits of such clerk. It shall be the duty of such clerk 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 said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk 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."

Therefore, it will be noted from the above statutes that the law specifically states that county clerks of counties of the first class shall receive a salary which shall be in lieu of all and any fees, emoluments or grants for all the duties performed by said clerk. The sections that relate to the county clerks of second, third and fourth class counties provide that

they shall pay over to the county treasurer all money collected by them during the month and required to be shown in said monthly report.

It is for us to determine whether the fee allowed for the extension of the tax book is a fee to which the county clerk is entitled in addition to his salary. The primary rule of statutory construction is to ascertain and give effect to the lawmaker's intent. *Meyering v. Miller*, 330 Mo. 855, 51 S.W. (2d) 65; *Cummins v. Kansas City Public Service*, 334 Mo. 672, 66 S.W. (2d) 920. With this rule in mind we turn to the statutes dealing with the fee of the county clerk for extending the tax books. The first amendment of Section 11048 which went into effect in November, 1945, provided that if the clerk fails to make out such extension of taxes on the tax books before a certain date, then the county court shall deduct twenty per cent from the amount of the fees due the clerk for making such extension. If the fees are not to be allowed the clerk for extending the taxes it would render nugatory this provision that twenty per cent of the fees were to be taken away from him. In ascertaining the legislative intent, one rule that may be followed is the maxim that the expression of one thing implies the exclusion of the other (*expressio unius est exclusio alterius*). *State ex inf. Conkling v. Sweaney*, 270 Mo. 685, 195 S.W. 714. In carrying out this maxim, 59 C. J. 984 states that where a statute "directs the performance of certain things by a particular person it implies that it shall not be done by a different person."

The provision in Section 11238, which was in the 1945 enactment and is in the present bill, provides that in counties of the first and second class and the City of St. Louis all fees and compensation allowed in this section shall be paid into the county or city treasury, as provided by law, by the several officers and persons herein named who shall have received any such fees and compensation. This provision specifically states that in counties of the first and second class and the City of St. Louis fees and compensation must be paid into the county and city treasury. Applying the rule of statutory construction that where particular officers are directed to do a certain thing, it implies that other officers are exempted from such requirement.

Further, the first amendment of Section 11238, passed by the Sixty-third General Assembly (Laws of Missouri, 1945, page 1823), provided that except in counties in excess of 100,000 the county clerk should receive a fee for extending the tax on the assessment book. This exception was placed in the law because of Section 12, Article VI of the Constitution of Missouri, 1945, which provides:

"All public officers in the City of St. Louis and all state and county officers in counties having 100,000 or more inhabitants, excepting public administrators and notaries public, shall be compensated for their services by salaries only."

If the Legislature had intended that all county clerks should pay over and account for the fees received in extending the tax book, then it was not necessary to include this exception. Therefore, when it excluded county clerks of counties of over 100,000, who were by the Constitution on a strict salary basis, it must have considered the fees allowed for extending the tax book as fees to which the other county clerks were entitled.

The further amendment of 1946, in which it was provided that in counties of the first and second class and the City of St. Louis all fees and compensation allowed to be paid into the county or city treasury, was probably substituted for the earlier provision relating to counties of over 100,000 in order to comply with Section 8 of Article VI of the Constitution of Missouri, 1945, which provides that "all counties within the same class shall possess the same powers and be subject to the same restrictions." However, the reasoning applicable to the first 1946 amendment of Section 11238 is equally applicable to the later amendment. Therefore, it would appear that the fee allowed to the county clerk for extending taxes has been, and is now, an unaccountable fee.

The question next arises whether the present county clerks are entitled to the fee provided in House Bill No. 126. It is true that Section 13 of Article VII, Constitution of Missouri, 1945, provides that the compensation of any state, county or municipal officer shall not be increased during the term of office. However, as we have pointed out, this fee allowed the county clerks has, at least since November, 1945, been unaccountable, and therefore the provision of House Bill No. 126 did not increase compensation during the present term of the clerks, which began January 1, 1946. One other question in regard to this constitutional prohibition against increase during the term might arise, and that is whether the change from the ten cents per hundred words and figures, as provided by the 1933 act, to three cents per name, as provided for in the 1949 act, would be an increase in compensation. In *Forgrave v. Buchanan County*, 282 Mo. 599, 222 S.W. 755, it is held that a statute will not be held to increase an officer's compensation, contrary to such constitutional provision, "unless it appears, as a matter of law, on the face of the act itself, that the officer's compensation is thereby increased." With this rule in mind, we believe it

cannot be held that on its face House Bill No. 126 increases the clerk's compensation, contrary to Section 13, Article VII, Constitution of Missouri, 1945.

CONCLUSION

It is, therefore, the opinion of this department that House Bill No. 126, enacted by the Sixty-fifth General Assembly, which provides a fee of three cents per name to the county clerks, repeals Section 11049, Laws of Missouri, 1947, Vol. II, page 429, which allows county clerks a fee of ten cents per hundred words and figures for extending the tax book. It is further the opinion of this department that county clerks of the third and fourth class counties are entitled to draw this fee as compensation for extending the 1949 tax book.

Respectfully submitted,

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AMO'K:ml