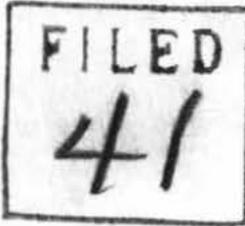


COUNTY CLERKS:

County clerks of third and fourth class counties are entitled to charge both the state and county the fees provided for duties regarding manufacturer and railroad tax books. Such fees are unaccountable.

FEES AND SALARIES:

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January 29, 1952

2-20-52

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

Dear Sir:

This department is in receipt of your opinion request regarding the payment and accountability of certain fees to county clerks of third and fourth class counties. Your request reads in part:

"Are County Clerks in third and fourth class counties entitled to charge both the State and County, the fees for making the Merchants and Manufacturers and Railroad Tax Books, provided in Sections 150.340 and 151.290, R. S. Mo. 1949, respectively?"

"Also, are said fees accountable or non-accountable?"

The duties of county clerks with respect to the manufacturer tax book and the compensation therefor is provided for by Section 150.340, RSMo 1949, which reads:

"1. After the equalization has been completed, the county clerk shall extend on the book all proper taxes at the same rate as assessed for the time on real estate, and on or before the first day of November thereafter, he shall make out and deliver to the collector a copy of such book, properly certified, and take the collector's receipt therefor, which receipt shall specify the aggregate amount of each kind of taxes due thereon, and the clerk shall charge the collector with the amount of such taxes.

Honorable W. H. Holmes

"2. The county clerk shall receive as compensation for making the tax book, copy, filing statements, and certifying the same, the sum of six cents for each name or firm, one-half payable by the county, the other by the state. The county assessor shall receive as compensation for his services in taking the statements herein required and entering them in the book the sum of twenty-five cents per statement. The members of the board of equalization shall receive the same per diem for services under sections 150.300 to 150.370 as fixed by law in relation to general property. In counties of the first class and the city of St. Louis the compensation herein provided shall be paid to the county or city treasury and not to the individual."

The first question presented is whether or not county clerks of third and fourth class counties are entitled to charge both the state and the county the fees provided for in Section 150.340, supra. The question is occasioned by the provisions of Section 51.390, RSMo 1949, which reads:

"The clerk of the county court, in counties of the third and fourth classes, shall charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county."

Section 51.390 is part of Chapter 51, which contains the general provisions regarding county clerks; Section 150.340 is a special section which provides for the duties of the county clerks with regard to the manufacturer tax book and the compensation provided therefor. While Section 51.390 provides that county clerks of third and fourth class counties shall collect all fees accruing to the office except such as are chargeable to the county, Section 150.340 specifically provides that the county clerk shall receive certain fees for the discharge of his duties with respect to the manufacturer tax book, "one-half payable by the county, the other by the state." We, therefore, find an apparent conflict between these two sections and must resort to the rules of statutory construction to resolve this conflict. The applicable rule to be utilized in this instance to arrive at the legislative intent is stated and

Honorable W. H. Holmes

discussed in the case of State ex rel. v. Brown, 68 S.W. (2d) 55, l.c. 59, 334 Mo. 781, as follows:

"It will be observed that section 4556, except the last proviso which is not pertinent to the matter here in controversy, relates to corporations in general, while section 5613 relates only to a particular class of corporations, to wit, building and loan associations. In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Tevis et al. v. Foley, 325 Mo. 1050, 1054, 30 S.W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S.W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S.W. 122. If there be any repugnancy between these two statutes, the general statute, section 4556, must yield to the special statute, section 5613."

Therefore, in view of the above, we are of the opinion that county clerks of third and fourth class counties are entitled to charge both the state and the county the fees provided for the discharge of their duties with respect to the manufacturer tax book, as the general provisions of Section 51.390 are not applicable in this instance, the special provision of Section 150.340 prevailing.

The next question to be considered is whether or not the fees provided for by Section 150.340 are accountable fees. To arrive at the legislative intent in this regard, we feel that it becomes necessary to examine the provisions of Section 51.400, RSMo 1949, which reads in part:

Honorable W. H. Holmes

"1. The following fees and compensation shall be allowed to and retained by the clerk of the county court, as unaccountable fees, in addition to the salary and other fees now provided by law, for services rendered:

"(1) For extending the tax on the 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;

"(2) For making a copy of the tax book for the use of the collector, including certificate and seal to the same, for every hundred words and figures, ten cents, one-half to be paid by the state, the other half by the county; for making an abstract of the assessor's book for the state tax commission, five dollars, and in addition thereto fifty cents for every one hundred thousand dollars' worth of property on such abstract, to be paid by the state;

* * * * *

"2. In all 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 clerk of the county court who shall have received any such fees and compensation."

We therefore see that the legislature has provided fees for county clerks for their duties with regard to the tax book provided for by the general revenue laws, and has further specifically provided that such fees shall be unaccountable, except in counties of the first and second class and the City of St. Louis. The duties for which such unaccountable fees are provided are similar to those provided for in Section 150.340 regarding the manufacturer tax book. We feel that in this regard Section 51.400 and Section 150.340 relate to the same subject and therefore must be construed together to arrive at the true legislative intent. We find the following regarding the construction of statutes in pari materia in the case of Curators of Central College v. Rose, 182 S.W. (2d) 145, l.c. 150:

Honorable W. H. Holmes

"The rule relied upon is stated as follows:
"All consistent statutes relating to the same subject, and hence briefly called statutes in pari materia, are treated prospectively, and construed together as though they constituted one act. This is true whether the acts relating to the same subject were passed at different dates, separated by long or short intervals, at the same session, or on the same day" Suth. St. Const. § 283. * * * "Where enactments separately made are read in pari materia, they are treated as having formed, in the minds of the enacting body parts of a connected whole, though considered by such a body at different dates, and under distinct and varied aspects of the common subject. Such a principle is in harmony with the actual practice of legislative bodies, and is essential to give unity to the laws and connect them in a symmetrical system. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions." (Ib., Sec. 288).
Sales v. Barber Asphalt Paving Co., 166 Mo. 671, 677, 66 S.W. 979, 980; State ex rel. Columbia National Bank of Kansas City v. Davis, 314 Mo. 373, loc.cit. 388, 284 S.W. 464; 59 C.J. Sec. 620, p. 1042. * * *."

Section 150.340 does not specifically state that the fees provided for therein shall be unaccountable. However, it is logical to assume that such was the intent of the legislature as it was specifically provided that they shall be accountable in counties of the first class and the City of St. Louis. Furthermore, Section 51.400 specifically provides that fees for the discharge of similar duties with respect to the tax book provided for by the general revenue laws shall be unaccountable. These two statutes, which are in pari materia, must be construed together. Therefore, in view of the above, we are of the opinion that it was the intent of the legislature that the fees provided for by Section 150.340 are not accountable by county clerks of third and fourth class counties.

Honorable W. H. Holmes

The remaining question presented in your opinion request regards the payment of fees and accountability of same to which county clerks of third and fourth class counties are entitled for the discharge of duties relating to the railroad tax book.

Sections 151.170, 151.180 and 151.190, RSMo 1949, charge the county clerk with the duty of making out the railroad tax book and other duties with regard thereto. Section 151.290, RSMo 1949, then provides that:

"The county clerk shall be allowed fees at the same rate for making out the railroad tax book as he may receive for like services in making out tax books under the general revenue law of the state."

Section 51.400, RSMo 1949, reads:

"1. The following fees and compensation shall be allowed to and retained by the clerk of the county court, as unaccountable fees, in addition to the salary and other fees now provided by law, for services rendered:

"(1) For extending the tax on the 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;

"(2) For making a copy of the tax book for the use of the collector, including certificate and seal to the same, for every hundred words and figures, ten cents, one-half to be paid by the state, the other half by the county; for making an abstract of the assessor's book for the state tax commission, five dollars, and in addition thereto fifty cents for every one hundred thousand dollars' worth of property on such abstract, to be paid by the state;

"(3) For making an abstract of the tax book for the director of revenue, including certificate and seal to same, five dollars, and one-tenth of one per cent of the amount of revenue tax on such abstract, to be paid by the state;

Honorable W. H. Holmes

"(4) For certifying statements to the director of revenue, as required by law, or making any certificate required by law, under the seal of said court, seventy-five cents for each certificate and seal, to be paid equally out of the state and county treasury;

"(5) For every settlement with the collector, thirty-five cents, to be paid equally out of the state and county treasury;

"(6) For safekeeping, filing and transmitting the collector's bond to the director of revenue, one dollar;

"(7) For filing, preserving and safekeeping of the assessment lists, one-half of one cent per list, to be paid one-half by the state and one-half by the county.

"2. In all 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 clerk of the county court who shall have received any such fees and compensation."

Section 151.290, supra, was originally enacted as Section 6896, R. S. Mo. 1879. It has remained unchanged to the present time. At the time of its enactment, the only statute providing for fees to county clerks for the discharge of duties with regard to tax books, was Section 6896, R. S. Mo. 1879, which section was part of the general revenue law. Through the various revisions, this statute remained part of the general revenue law until the 1949 revision when those provisions which relate to county clerks became Section 51.400, RSMo 1949. Section 51.400 remains the provision which provides for the fees to which county clerks are entitled for the discharge of their duties regarding the tax book provided for by the general revenue laws. It is therefore our opinion that the county clerks of third and fourth class counties shall be entitled to such fees for making out the railroad tax book as are provided for in Section 51.400, supra.

Since Section 51.400 specifically provides that the fees provided for therein shall be unaccountable and since Section

Honorable W. H. Holmes

151.290, provides that county clerks shall receive such fees as are provided for like duties in making out tax books under the general revenue laws, it is our opinion that the fees to which county clerks are entitled for the discharge of duties with regard to the railroad tax book are unaccountable.

There remains the question of whether or not the county is liable for the fees to which such county clerks are entitled for making out the railroad tax book.

One half of the fees provided for in Section 51.400, supra, is, in some instances, to be paid by the county. This section must be construed together with Section 51.390, supra. We feel that the same principle applies in this instance as applied to the fees provided for the discharge of duties regarding the manufacturer tax book. Section 51.400, being a special statute prevails over Section 51.390, as this latter statute is a general statute. It is therefore our opinion that the county clerks of third and fourth class counties are entitled to charge both the state and the county for the discharge of duties regarding the railroad tax book.

CONCLUSION

It is therefore the opinion of this department that county clerks of third and fourth class counties are entitled to charge both the state and the county the fees provided for in Section 150.340, RSMo 1949, for the discharge of duties regarding the manufacturer tax book and that such fees are unaccountable.

It is further the opinion of this department that county clerks of third and fourth class counties are entitled to such fees as are provided for in Section 51.400, RSMo 1949, for the discharge of duties regarding the railroad tax book, which fees such county clerks are entitled to charge both the state and the county and such fees are unaccountable.

Respectfully submitted,

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General