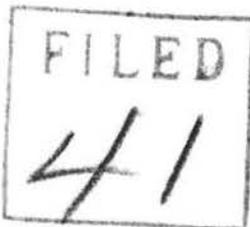


COUNTY CLERKS: Fees for Section 140.100, Sub-
FEES: section 2, RSMo 1949, for county
clerks are accountable fees.



November 4, 1953

Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Mr. Holman:

The following opinion is given in answer to your letter of August 31, 1953, in which you state as follows:

"Sub-section 2 of Section 140.100, R.S. Mo., 1949, provides as follows:

'For making and recording the delinquent land lists, the collector and the clerk shall receive ten cents per tract or lot and the clerk shall receive five cents per tract or lot for comparing and authenticating such list.'

"The question is, are said fees earned by the clerk accountable or non-accountable?"

The question is whether or not the county clerks' fees for making, recording, comparing and authenticating the delinquent land lists, as provided in Subsection 2 of Section 140.100, RSMo 1949, are accountable. If they are accountable, the duty to make the account is covered by Sections 50.340 through 50.520, 51.120 and 51.150, RSMo 1949. We do not quote these sections at length because they do not answer the determinative question, which is: Did the Legislature, in providing the fees in question, intend for the clerks personally to retain them as remuneration for their services? In other words, when Section 140.100 was enacted (R.S. 1939, #11117, 11124, A.L. 1945, p. 1910, A. 1949, S.B. 1024), did the Legislature intend to increase the compensation of county clerks by the addition of such fees to be by them retained and unaccountable? For the following reasons we believe this question must be answered negatively.

At an earlier date, remuneration to the county clerk was based upon the amount of fees collected by that office, but the present salary statutes indicate a legislative intent to wholly compensate the clerk by a fixed salary only and without regard to fees collected (with certain exceptions clearly expressed and later referred to herein). Attention is invited to the 1937 opinion of the Supreme Court of Missouri in Ward v. Christian County, 111 S.W. (2d) 182, 184, wherein earlier statutes compensating the county clerk are referred to and in which opinion the court indicates that, by Laws 1937, page 440, Mo. St. Ann., #11811, page 7028, the office was put on a salary basis having no regard to the fees collected.

The present basic salary statutes found in RSMo 1949 are 51.280 (counties of class one), 51.290 (counties of the second class), 51.300-51.310 (counties of the third class), and 51.350 (counties of the fourth class). We find no escape from the conclusion of these statutes, that the salaries therein provided were to replace the fee basis of remuneration and that no fee was thereafter to be retained by the clerk as compensation to him for any service except in instances clearly and specifically stated. There are other unambiguous statutes which, in unmistakable terms, allow compensation in addition to the base salary above referred to and in which statutes the Legislature clearly states that the particular monies are to be "retained by the clerk" or to be "received in addition to his salary" or are to be "unaccountable." See Sections 51.290, 51.320, 51.340, 51.360, 51.380 and 51.400. This indicates that the clerk is not to retain fees collected under statutes--such as the one in question--which merely prescribe the fee for the particular service without stating what disposition is to be made thereof.

Section 51.410, RSMo 1949, provides as follows:

"The clerks of the county courts, respectively, shall be allowed fees for their services as follows:

"For an order to erect or repair a public bridge \$0.30"
(and next follows 54 other specific services with the fee therefor)

This statute is similar to Section 140.100, in question. Both prescribe a fixed fee but neither state the disposition to be made thereof. Yet does any clerk think the fees set out in Section 51.410 are to be retained by him in addition to his salary? We

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cannot conceive of such a contention. These fees are certainly accountable, and it seems to us that the Legislature intended to put the fees prescribed by Section 140.100 in the same category. If the Legislature had intended to allow the clerk to retain the fees prescribed by Section 140.100, it presumably would not have remained silent on the point as it did in Section 51.410, but would have expressly so stated as it did in the general statute on unaccountable fees (Section 51.400), which provides as follows:

"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;

* * * * *

(Emphasis ours.)

Should the fees provided for in Section 140.100 be placed on the same basis (concerning accountable) as those provided for in Section 51.410 (accountable) or on the same basis as those provided for in Section 51.400 (unaccountable)? Legislative silence on the matter of accounting, and similarity of language in Sections 51.410 and 140.100, answers the question.

In view of the salary basis of compensation, we believe the court would resolve any doubt against the clerks, concerning the matter of accounting for a given fee, and that the legal presumption of legislative intent is that every fee is to be accounted for and not to be retained by the clerk unless the Legislature clearly states otherwise.

We cannot overlook the familiar principle restated in *Ward v. Christian County*, supra, l.c. 183:

"It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute,

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and that the statute which is claimed to confer such right must be strictly construed.' State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S.W. 655, 656. * * *"

In State ex rel. Smith v. Holliday, 61 Mo. 524, the clerk performed certain services concerning tax bills but was denied the fee claimed therefor, on ground that the Legislature had made no provision for such compensation.

No one should fail to appreciate the service rendered by county clerks performing their duties in connection with the delinquent land lists, but we cannot say that the Legislature intended to compensate them therefor by allowing them to retain the fees set out in Section 140.100. In absence of an expressed legislative intent to the contrary, we are constrained to rule that said fees earned by the county clerk are accountable.

CONCLUSION

It is the opinion of this office that county clerks' fees for making, recording, comparing and authenticating the delinquent land lists as provided by Section 140.100, RSMo 1949, are accountable fees.

This opinion, which I hereby approve, was written by my Assistant, James A. Vickrey.

Yours very truly,

JOHN M. DALTON
Attorney General

JAV:ml