

EMPLOYMENT SECURITY LAW:
CERTIFICATES OF ASSESSMENTS:
FILING AND RECORDING FEES
NOT PAYABLE IN ADVANCE:
CIRCUIT CLERK NOT LIABLE
FOR UNPAID FEES: WHEN:

Missouri Division of Employment Security's
certificates of assessment showing amount
of employers' delinquent contributions,
interest and penalties under Section
288.170, RSMo Cum. Supp. 1957, shall be
filed and recorded by circuit clerk with-
out payment of his fees in advance. When

filing and recording fees for certificates are unpaid at time circuit clerk's accounts are audited by state auditor, clerk cannot legally be found liable to county for uncollected fees, if he has charged for and reported same to county court as provided by Sections 483.550 and 483.555, RSMo 1949.

January 12, 1960

Hon. J. Allen Gibson
Prosecuting Attorney
Stone County
Galena, Missouri



Dear Mr. Gibson:

This department is in receipt of your request for a legal opinion reading as follows:

"Is the County Recorder required to record the Certificates of Assessments under Section 288.170 R.S. Mo. Supplement without his recording fee being paid in advance by Missouri Division of Employment Securities? If you so decide that he is required to record, is he then to be held accountable to the State Auditor if the fees are unpaid?"

Two questions are posed in the opinion request. The first one inquires if the county recorder is required to record certificates of assessments under Section 288.170, RSMo, Cum. Supp. 1957, without his recording fees being paid in advance by the Missouri Division of Employment Security. The second inquiry is that if the recorder is required to record such certificates is he held accountable to the state auditor if the fees are unpaid.

Both of these inquiries are in regard to the duties of the county recorder of deeds, but it is assumed you have reference to the duties of the circuit clerk and not to those of the recorder because Section 288.170, RSMo Cum. Supp. 1957, imposes the duty of recording said certificates upon the circuit clerk and not upon the recorder of deeds.

All statutory references herein are to RSMo 1949 unless otherwise stated.

Section 288.170, RSMo, Cum. Supp. 1957, provides for the collection of delinquent contributions, interest and penalties from the employers liable for same under provisions of the employment

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security statute and reads as follows:

"1. In any case in which any contributions, interest or penalties imposed under this law are not paid when due and the assessment of which has become final, the division may file for record in the office of the clerk of the circuit court in the county in which the employer owing said contribution, interest or penalties resides, or has his place of business, or any other county in which he has property, or all of them, a certificate specifying the amount of the contributions, interest and penalties due and the name of the employer liable for the same and it shall be the duty of the clerk of the circuit court to file such certificate of record and enter the same in the record of the circuit court for judgments and decrees under the procedure prescribed for filing transcripts of judgments. From the time of the filing of such certificate, the amount of the contributions, interest and penalties specified therein shall have the force and effect of a judgment of the circuit court until the same is satisfied by the division through its duly authorized agents. Execution shall be issuable at the request of the division, its agent or attorney as is provided in the case of other judgments. No exemption shall be allowed from the levy of an execution issued for such contributions, interest and penalties and no indemnifying bond shall be required by the sheriff before making levy.

"2. If any employer defaults in the payment of contributions, interest, or penalties the amount due shall be collected by civil action in the name of the division. Such suit shall be brought in the county wherein the employer resides or has a place of business or agent for the transaction of business in this state or where he or it may be found, and the employer adjudged in default shall pay the cost of such action. Any civil action brought under this law shall be heard by the court at the earliest possible date and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial

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review under this law and cases arising under the workmen's compensation law of this state. If any employer shall fail to resort to the remedy herein provided for reassessment of any contributions, interest or penalties within the time as provided herein, such employer shall thereafter be precluded from asserting any defense in a direct suit for the collection of the contributions.

"3. The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any other remedy or action for which provision is made."

It is noted that the above-quoted section provides that when contributions, interest and penalties become due and unpaid by an employer, and the assessment of same has become final, the Division of Employment Security may file a certificate showing the amount of the contributions, interest and penalties and the name of the employer liable for same in the office of the clerk of the circuit court of the county of the employer's residence or the county in which his business or agent is located, or any other county in which the employer has property, or in all of such counties. When the certificate is presented to the circuit clerk, it is his duty to file and record it in the circuit court judgment and decree record, and in so doing, he shall observe the statutory procedure for filing transcripts of judgments. Section 511.490, RSMo 1949, dealing with the filing of transcript of judgment, provides:

"Any clerk of a court who shall refuse or neglect, after tender of his fees for the same, to file and record such transcript and docket such judgment or decree, as in sections 511.440 to 511.480 directed, shall be liable on his official bond to any person damaged by reason of such refusal or neglect, in double the amount of damages sustained."

Section 288.170, supra, further provides that from the time of the filing of the certificate, the amount stated therein shall have the force and effect of a circuit court judgment until it has been satisfied. An execution may be issued at the request of the Division of Employment Security for the amount of delinquent contributions, interest and penalties, and no property of the defendant shall be exempt from levy on such execution.

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Paragraph 2, Section 288.170, affords the Division of Employment Security the remedy of bringing a civil action in the court of the county in which the employer resides, or his place of business, agent for the transaction of business, or in any county in which the employer may be found in this state, to recover delinquent contributions, interest and penalties.

The Division is not required to pay court costs of such action. It was so held in the case of *Murphy v. Limpp*, 147 SW2d 420, where the plaintiffs were members of the Missouri Unemployment Compensation Commission, the predecessor agency of the present Division of Employment Security. The Commission brought suit in the Circuit Court of Gentry County to recover delinquent unemployment compensation from an employer. The employer's motion requiring the Commission to furnish security for costs was sustained. Thereafter, upon a trial of the case, a judgment was had for the defendant and defendant was awarded court costs. From this judgment, the Commission appealed to the Supreme Court of Missouri. The appellate Court affirmed the judgment of the trial Court in all respects, except that part of the judgment awarding costs to the defendant which was reversed.

In discussing that part of the judgment as to court costs, the Court said at l.c. 423 as follows:

"[3-5] The trial court entered a judgment for the costs incurred against appellants. This action was assigned as error, and appellants contend that the state is not liable for the costs in a case of this character. In 59 C.J., p. 332, Sec. 503, we read: 'It is a general and well established rule apart from statute that costs are not recoverable from a state, in her own courts, whether she has brought suit as plaintiff or has properly been sued as defendant; or whether she is successful or defeated.' Therefore, absent a statutory provision, the costs were erroneously assessed against the state. * * *"

From this decision, it is apparent the state or its agencies is not liable for costs in this class of actions. Applying the doctrine of this case further, it appears that if the Division of Employment Security were to file an action of this kind in the circuit court of your county, the circuit clerk could not require the Division to make a cost deposit or furnish security for court costs.

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Since the Division of Employment Security is not liable for court costs in actions brought to recover contributions from a delinquent employer, nor for costs deposits, and cannot be made to furnish security for court costs, by analogy it seems that the Division also cannot be required to pay the fee for filing certificates of assessment, to the circuit clerk, absent express provision requiring such payment by the State and its agencies, or by the Division of Employment Security. No Missouri statutes expressly provide that the circuit clerk shall charge the State or its agencies, or the Missouri Division of Employment Security a fee in advance for filing and recording the certificates authorized by said Section 288.170.

Therefore, our answer to the first inquiry is that it is the duty of the clerk of the circuit court to file and record certificates of assessments of delinquent contributions, interest and penalties, as provided by Section 288.170, supra, and that he cannot require the fees due him for such services to be paid in advance by the Division of Employment Security.

The second inquiry is that if the circuit clerk is required to record certificates of assessment (under the circumstances referred to in the first inquiry) is he accountable to the state auditor if the fees are unpaid.

It is our assumption that the inquiry apparently intended is: If the answer to the first inquiry is in the affirmative and the state auditor should subsequently audit and accounts of the circuit clerk, could the auditor legally find the circuit clerk short in his accounts, and liable to the county for filing and recording fees for such certificates, if the fees are unpaid. We have concluded that it is the duty of the circuit clerk to file and record the certificates of assessment and that he cannot require the Division of Employment Security to pay the fees in advance.

If the clerk has substantially complied with Sections 483.550 and 483.555 in charging the statutory fee for filing and recording the certificates of assessment, and the clerk has reported all such earned and uncollected fees to the county court in the manner provided by Section 483.560, it is our thought that after an examination of the clerk's accounts by the state auditor, the auditor could not legally find the clerk short in his accounts and liable to the county for failure to collect filing and recording fees from the Division of Employment Security prior to filing and recording such assessments.

CONCLUSION

Therefore, it is the opinion of this office that when the Missouri Division of Employment Security presents certificates of

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assessment showing the correct amount of delinquent contributions, interest and penalties owed by employers, to the clerk of the circuit court for filing and recording, in accordance with the provisions of Section 288.170, RSMo, Cum. Supp. 1957, the circuit clerk shall file and record all such certificates, without the filing and recording fees being paid in advance.

It is the further opinion of this office that when said certificates of assessments have been filed and recorded by the circuit clerk in the manner provided by Section 288.170, RSMo, Cum. Supp. 1957, and the filing and recording fees are unpaid at the time the accounts of the circuit clerk are audited by the state auditor, the clerk cannot legally be found short in his accounts and liable to the county for the unpaid fees, if it appears that he has charged all such fees on behalf of the county and has reported same to the county court as provided by Sections 483.550 and 483.555, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

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