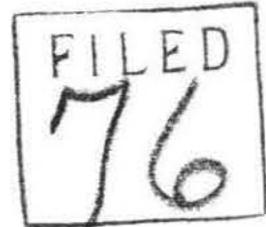


CEMETERIES, PUBLIC AND
PRIVATE:
TRUST FUNDS:
ADMINISTRATION OF:

1. For keeping book on all receipts, disbursements and management of seven trust funds for maintenance of public and private cemeteries, under Sec. 214.180, RSMo 1959, County Clerk cannot be compensated from trust funds.
2. It is County's responsibility to pay for County Clerk's record book. 3. County Treasurer cannot be compensated for booking services on four of trust funds, services purely voluntary, no part of official duties. 4. Trustees' annual report, required by Sec. 214.150, RSMo 1959, shall be prepared by County Clerk and filed by trustees. County Clerk and County Court cannot be paid compensation for preparation and filing of report. 5. When requested, Prosecuting Attorney shall advise County Court on all legal questions arising in connection with preparation of trustees' annual report. Not Prosecuting Attorney's official duty to prepare report. He cannot be compensated for advice to Court in addition to statutory salary.

July 14, 1961

Honorable Clarence A. Roberts
Representative, Andrew County
Rea, Missouri



Dear Mr. Roberts:

This office is in receipt of your request for a legal opinion, which reads as follows:

"During the past several years in Andrew County there has been established 7 perpetual trust funds for the care and upkeep of various cemeteries in Andrew County, Missouri. These have been established under the provisions of Chapter 214 of the Revised Statutes of Missouri, 1959. There are also some other people desirous of creating new trusts but are concerned with the administration procedure on such trusts. All of these trusts designate the County Court as Trustees and charge them with the administration of said trusts and require them to file an annual trustees report in Circuit Court. The following are the questions which I would like to have answered.

"1. Section 214.180 states that the Clerk of the Court shall keep in a separate record book all receipts and disbursements of each and

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every trust fund or funds and a detailed account of the management of the same. In complying with this section is the Clerk entitled to compensation from the Trust fund? Who is responsible for the payment of the book purchased for the keeping of such records? Is this an obligation to be prorated among the trust funds or is it a charge against the County?

"2. At the present time the County Treasurer is paid a yearly bookkeeping salary on four of these trusts. Is the County Treasurer entitled to compensation for this service or is this a duty imposed upon him by virtue of his being County Treasurer? If the County Treasurer refuses to accept the trust fund monies unless he is compensated for his service then who can legally accept and deposit said money?

"3. At the present time the Prosecuting Attorney prepares the annual Trustees Report and files the same in Circuit Court. In the past he has been allowed a fee for his service. Due to the fact that the County Court is designated as trustees and are the responsible parties for the administration of the trust would it be legal for the County Clerk to prepare the Trustees Report and file the same in Circuit Court? If the Court asks the Prosecuting Attorney to prepare the report would this be considered a duty of the Prosecuting Attorney as legal adviser for County officials rather than an act of private employment?"

All statutory references herein are to RSMo 1959, unless otherwise shown.

Section 214.150 provides that the county courts of the respective counties shall become trustees of trust funds created for the purpose of maintaining in part or in whole public or private cemeteries in their respective counties and reads as follows:

"The county courts of the respective counties of this state shall become trustees and custodians of any fund or funds which may be created by any person or persons, firm or corporation,

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for the purpose of maintaining in part or in whole any public or private cemetery in their respective county. When a gift or bequest is made to said county court they shall accept the same upon the terms and conditions of said gift or bequest and administer said trust fund as herein provided and make report to the circuit court annually showing in detail the manner in which said trust fund or funds have been managed."

For the purposes of our present discussion it will be assumed that Section 214.150, supra, has been complied with, and that the County Court of Andrew County legally became the trustees of the seven trust funds donated for the purpose of maintaining the public and private cemeteries of the county, referred to in above quoted opinion request. In becoming trustees and accepting the custody of said trust funds the County Court acted in an official capacity, and not as private citizens.

Section 214.160 provides the County Court shall invest or loan the trust funds only in the manner therein provided. Said section reads as follows:

"The county court shall invest or loan said trust fund or funds only in United States government, state, county or municipal bonds, or first real estate mortgages or deeds of trust. They shall use the net income from said trust fund or funds or so much thereof as is necessary to support and maintain and beautify any public or private cemetery or any particular part thereof which may be designated by the person, persons or firm or association making said gift or bequest. In maintaining or supporting the cemetery or any particular part or portion thereof the court shall as nearly as possible follow the expressed wishes of the creator of said trust fund."

Section 214.180 imposes the duty of keeping a record of all receipts and disbursements and a detailed account of the management of the trust funds, upon the County Clerk. Said section reads as follows:

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"The clerk of the court shall keep in a separate record book all receipts and disbursements of each and every trust fund or funds and a detailed account of the management of the same."

The first question of the first inquiry of the opinion request is concerned with the above quoted section, and asks:

"In complying with this section is the clerk entitled to compensation from the trust fund?"

We understand the "complying with this section" of the question was intended to refer to the duties of the County Clerk in keeping the record book set out by Section 214.180, supra.

The County Clerk can be paid compensation for his services in performing said statutory duties only in such instances when the trust instruments so provide, some statute authorizes the payment of compensation to the Clerk, from the trust funds involved, or a statute provides such compensation shall be paid from a certain type or class of county funds.

No mention is made in the opinion request of any provisions of the trust instruments providing that compensation shall be paid to the county clerk for performance of his record-keeping duties, in connection with the trusts, from the trust funds, and it will be assumed the trust instruments do not contain any provisions of this nature.

In this connection, attention is called, to the general rule prevailing in Missouri, to the effect, that no compensation can be paid to a public official for performance of duties required of him by law unless a statute provides for payment to him of such compensation. In the absence of a statute authorizing such payment, the officer's services are deemed to be gratuitous. In the case of *Nodaway County v. Kidder*, 129 SW 2d 857, the court stated this general rule and held it to be applicable to a factual situation involved in the case. At l.c. 860 the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that

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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. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S.W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656."

This general rule is fully applicable to the facts involved in the present inquiry, and in view of the further factual situation no Missouri statute provides that the County Clerk shall be compensated for performing the duties imposed upon him by Section 214.180, supra, from the trust funds, or from any type or class of county revenue, no compensation can be paid to him.

In answer to the first question of the first inquiry, it is our thought, that for performance of the duties imposed upon him by Section 214.180, supra, the County Clerk is not entitled to, and cannot be paid compensation for his services from any of the trust funds.

The second question of the first inquiry is:

"Who is responsible for the payment of the book purchased for keeping of such records?"

Section 49.510 provides that the county shall provide offices, where the county officers may properly perform the duties of their respective offices, and the county shall equip such offices. Said section reads as follows:

"It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct."

The keeping of a record book on the trust funds, as referred to in Section 214.180, is one of the official duties of the county clerk, and obviously the book would be "necessary stationery,

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supplies, equipment * * *, " within the meaning of Section 49.510, which the county shall provide for the county clerk. Certainly the clerk could not perform the record-keeping duties on the trust funds, required of him without the record book, consequently, the county court shall furnish such a book to the clerk, at county expense.

Therefore, our answer to the second question of the first inquiry is that it is the responsibility of the county to pay the cost of the county clerk's record book.

The second inquiry informs us that at the present time the County Treasurer is paid a yearly bookkeeping salary on four of these trusts. The facts given are very meager, and it is not clear as to the exact kind of bookkeeping service the treasurer does perform. We are uninformed as to why the Treasurer is keeping books on any of the trust funds. The keeping of records by the treasurer is not only unnecessary, but it is a duplication of the records required to be kept by the county clerk, under provisions of Section 214.180, requiring the clerk to keep the necessary records on every trust fund of this class. The trust funds are not county funds of which the treasurer has custody and must keep records.

No Missouri Statutes impose the duty of keeping any records on trust funds of this class upon a county treasurer, no Missouri statutes fix the amount of compensation he shall receive if he does perform such services, from either the trust funds or from the county, and in the absence of such statutes the County Treasurer cannot be paid any compensation for bookkeeping services on the four trusts.

Therefore, our answer to the first question of the second inquiry is that the county treasurer is not entitled to be paid compensation for performance of bookkeeping services on the four trust funds. The bookkeeping services are purely voluntary on his part and they are no part of his official duties.

The second question of the second inquiry reads:

"If the County Treasurer refuses to accept the trust fund monies unless he is compensated for his service then who can legally accept and deposit said money?"

In discussing the preceding question we pointed out the county treasurer has no duties to perform with reference to the keeping of the accounts of the four trust funds and could not

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be compensated for performance of the bookkeeping services. By statute, the county court has been named the legal custodians of all trust funds of this class. They are without legal authority whatsoever to attempt to delegate their statutory duties to others, such as turning over custody of any trust funds to the treasurer at any time, for any purpose.

In the event the county court should have any uninvested trust funds, or undisposed trust income, or both, it is believed they might legally deposit same, temporarily, in a bank as trustees, in a separate account for each trust fund, until such time as the principal of each trust might be invested or loaned, in accordance with the provisions of Section 214.160, supra, or any income is needed to maintain a specified cemetery, or cemeteries.

In view of the foregoing, it is believed that no question actually arises with regard to the refusal of the county treasurer to accept trust fund monies unless he is compensated for bookkeeping services on the four trust funds, and no answer will be given to that question.

The third inquiry reads as follows:

"At the present time the Prosecuting Attorney prepares the annual Trustees Report and files same in Circuit Court. In the past he has been allowed a fee for his service. Due to the fact that the County Court is designated as trustees and are the responsible parties for the administration of the trust would it be legal for the County Clerk to prepare the Trustees Report and file the same in Circuit Court?"

Section 214.150, supra, provides the county court shall make the report, annually, to the circuit court, and reads in part as follows:

"* * * and make report to the circuit court annually showing in detail the manner in which said trust fund or funds have been managed."

The report referred to in the first question of the third inquiry is the same one mentioned in that portion of Section 214.150, supra, quoted above. Said report is that of the trustees and must be filed in circuit court by them, and not by the county clerk or the prosecuting attorney.

While no statute expressly provides that the county clerk shall prepare the trustees' annual report, it is the statutory

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duty of the county clerk to keep the records of the county court. We have previously noticed that it is the clerk's duty to keep a record book on the cemetery trust funds, under provisions of Section 214.180. It is believed that as official record keeper of the trust funds, the clerk would not only be more familiar with, and in a better position to prepare the report for the county court, than any other person but that it is the incidental duty of the clerk to prepare the report for the county court. In so doing the clerk is not entitled to compensation, in the absence of a statute authorizing payment of compensation to him.

Therefore, in answer to the first question of the third inquiry, it is our thought that it is the duty of the county clerk to prepare the annual report on the management of the cemetery trust funds, but said report shall be filed in circuit court by the trustees. The clerk cannot be paid compensation for the preparation of said report.

The second question of the third inquiry asks:

"If the Court asks the Prosecuting Attorney to prepare the report would this be considered a duty of the Prosecuting Attorney as legal advisor for County officers rather than an act of private employment."

Section 56.070, gives the general duties of the prosecuting attorney, and reads in part as follows:

"The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. He shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court or any judge thereof, except in counties in which there is a county counselor * * *." (Underscoring ours.)

Because of the statutory duties of the county court as trustees of the cemetery trust funds, and the maintenance of public and private cemeteries of the county from the trust funds, for the benefit of the general public, it is believed this is a matter in which the county is interested, within the meaning of that portion of Section 56.070, quoted above.

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Therefore, it follows that whenever the county court requests advice of the prosecuting attorney on any legal question pertaining to the trust funds, or in regard to the preparation of the trustees' annual report of the management of such funds to the circuit court, it is the official duty of the prosecuting attorney to furnish the advice requested. The furnishing of said advice does not include the preparation of the report, as it is the duty of the county clerk, and not that of the prosecuting attorney to prepare such report. In the event the prosecuting attorney does furnish legal advice to the county court in this particular, or if the prosecuting attorney should voluntarily prepare the trustees' report for the county court, he cannot be compensated therefor in addition to the salary he is entitled to receive, under the applicable statute as prosecuting attorney.

In this connection, it should also be borne in mind that the county court cannot be paid any compensation for their services in connection with the preparation and filing of the report.

For answer to the second question of the third inquiry it is our thought that, when he is requested by the county court, it is the official duty of the prosecuting attorney to advise the court, on all legal questions pertaining to the cemetery trust funds, or on those questions arising in connection with the preparation of the trustees' annual report on said trust funds, but it is not the duty of the prosecuting attorney to prepare such report for the county court. The prosecuting attorney cannot be compensated for his advice to the county court in this matter, in addition to the salary he is entitled to receive under the applicable statute, as prosecuting attorney.

CONCLUSION

Therefore, it is the opinion of this office that when members of a County Court are trustees of seven trust funds created for the purpose of maintaining in part or in whole, public and private cemeteries, under provisions of Sections 214.150, 214.160 and 214.170, RSMo 1959, that:

1. For keeping a book with a record of all receipts, disbursements, and a detailed account of the management of the seven trust funds, as required by Section 214.180, RSMo 1959, the County Clerk cannot be paid compensation for his services from any of said trust funds.

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2. It is the responsibility of the county to pay the cost of the County Clerk's record book.

3. The County Treasurer cannot be paid compensation for performance of bookkeeping services on four of the trust funds. Said services are purely voluntary and they are no part of his official duties.

4. The annual report of the management of the trust funds, by the trustees, required by Section 214.150, RSMo 1959, shall be prepared by the County Clerk and filed in Circuit Court by the trustees. The County Clerk cannot be paid compensation for his services in preparing said report. The County Court cannot be paid compensation for their services in connection with the preparation and filing of such report.

5. When requested by the County Court, it is the official duty of the Prosecuting Attorney to advise the Court on all legal questions arising in connection with the preparation of the trustees' annual report on the management of the trust funds, but it is not the official duty of the prosecuting attorney to prepare the report for the trustees. He cannot be paid compensation for the legal advice thus given to the Court, in addition to the salary he is entitled to receive as prosecuting attorney, under the applicable statute.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

PNC:aa:gm