

CIRCUIT CLERKS: With respect to House Bill No. 119 of  
COMPENSATION AND FEES: the 75th General Assembly (Section  
RECORDER OF DEEDS: 50.334, V.A.M.S.), circuit clerks  
COURTS: coming within the total compensation  
provisions of said bill are no longer  
authorized to retain the ten cents out of each bar enrollment fee  
allowed under Supreme Court Rule 6.04, and that circuit clerks-  
recorders and recorders covered by such section are not entitled  
to charge the fees provided for transcribing books or records  
belonging to the office of the recorder of deeds under Section  
59.600, RSMo 1959.

OPINION NO. 88

January 19, 1970

Honorable George W. Parker  
Representative, District 120  
819 Crestland  
Columbia, Missouri 65201



Dear Representative Parker:

This opinion is in response to your question which is as follows:

"Does House Bill 119, 75th General Assembly (regular session) in establishing a ". . . total compensation for all services performed . . ." void Section 59.600 RSMo 1959, and the fee authorized under Supreme Court Rule 6.04?"

The provisions of the bill to which you refer have been numbered Section 50.334 by the Revisor of Statutes and provides in part as follows:

"1. In all counties having a population of less than five hundred thousand and an assessed valuation of less than three hundred million dollars, the recorder of deeds, the circuit clerk, the circuit clerk-ex officio recorder of deeds, or the clerk of Court of Common Pleas, as the case may be, shall receive as total compensation for all services performed by him an annual salary which shall be computed on a combination population assessed valuation basis as set forth in the following schedule."

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Supreme Court Rule 6.04 provides in full as follows:

"All enrollment fees and penalties paid to the Circuit Clerks shall be forwarded to the Clerk of the Supreme Court on or before the 5th day of the month after that in which they were collected, together with a statement showing by whom each fee and penalty were paid.

"As compensation to the Clerks of the said Circuit Courts, at the time of remitting said Clerk may retain ten cents out of each annual enrollment fee. The Clerk of the Supreme Court shall file and preserve said statements and shall keep enrollment fees and penalties in a separate fund to be known as the 'Bar Fund' and to be paid out as hereinafter provided."

We note that the clerks of the circuit court have been authorized to retain ten cents out of each annual enrollment fee since the rule was first promulgated. Mo. Bar Journal, Vol. 5, p. 323 (1934).

It is clear that the Supreme Court of the State has the authority to provide for the integration of the Bar and for the collection of an annual enrollment fee. The provisions of the rule and those relating to the administration of the Bar are legislative in nature. Lathrop v. Donohue, 367 U.S. 820, 6 L.Ed. 2d 1191, 81 S.Ct. 1826 (1961).

We note also that these rules were not promulgated under Section 5 of Article V of the Missouri Constitution which authorizes the Supreme Court of Missouri to promulgate rules of practice and procedure and which rules so promulgated may be amended or annulled only by legislation directed specifically to that purpose.

We have given consideration to the theory which has great merit that the compensation provided for the clerk by this rule is in fact for service outside of the regular duties of the clerk and therefore not affected by the total compensation provisions of Section 50.334. Walsh v. County of St. Louis, 353 S.W.2d 779 (1962).

In our view, however, although the Supreme Court might have delegated some other official or agency to collect the bar fee and might have authorized such official or agency to retain a part of such fee as compensation, the fact remains that the only official so authorized has been the circuit clerk and that the provisions of the rule thus incorporated the function of the collection

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of the bar enrollment fee into the group of services performed by the circuit clerks and the compensation therefore became compensation for services rendered by such officer. Unquestionably, the legislature has the right to govern the salary of such clerks; and in enacting the total compensation provisions contained in Section 50.334, the legislature clearly intended that such clerks not retain any other compensation paid to them in their official capacity. In our opinion, such clerks are no longer authorized to retain the ten cents out of each bar enrollment fee.

It is also our view that such compensation is, in fact, payable to the clerk by virtue of the services rendered by his office and constitutes "fees collected by virtue of his office" within the meaning of Section 483.560, RSMo 1959, and as a consequence, must be paid into the county treasury by all such clerks within the provisions of Section 50.334.

You also inquired as to whether or not Section 59.600, RSMo 1959, which was not expressly repealed by House Bill No. 119 is "void".

Section 59.600, RSMo 1959, provides in full as follows:

"For making the transcript provided for in section 59.580, the recorder shall be entitled to such compensation as may be allowed by the county court, not to exceed eight cents for every one hundred words and figures so transcribed, to be paid out of the county treasury."

In our opinion, circuit clerks-ex officio recorders and recorders entitled to the total compensation under the provisions of Section 50.334 are no longer entitled to the compensation provided by the above Section 59.600. Further, such officers are not to collect the amounts set out in Section 59.600 for the services rendered for the reason that there is no point in having such amounts paid out of the county treasury and paid back into the county treasury.

#### CONCLUSION

It is, therefore, the opinion of this office with respect to House Bill 119 of the 75th General Assembly (Section 50.334, V.A.M.S.) that circuit clerks coming within the total compensation provisions of said bill are no longer authorized to retain the ten cents out of each bar enrollment fee allowed under Supreme Court Rule 6.04 and that circuit clerks-recorders and recorders covered by such section are not entitled to charge the fees provided for transcribing

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books or records belonging to the office of the recorder of deeds under Section 59.600, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a prominent flourish at the end.

JOHN C. DANFORTH  
Attorney General