

CIRCUIT CLERKS:

Pursuant to the provisions of Section 55.220, RSMo 1959, the circuit clerk in second class counties is required to file with the county auditor a monthly statement showing all moneys and fees received by him by virtue of his office and all sums paid by him, to whom paid and for what purpose regardless of the source of such funds or of the persons entitled to receive payment.

OPINION NO. 217

May 1, 1970

Honorable William S. Brandom
Prosecuting Attorney
Clay County Court House
Liberty, Missouri 64068



Dear Mr. Brandom:

This is in response to your request for an official opinion regarding an interpretation of Section 55.220, RSMo 1959, which is as follows:

"The clerk of the circuit court, on the last secular day of each month, shall file with the auditor a full and complete statement of all moneys and fees received by him by virtue of his office and of all sums by him paid out and to whom paid and for what purpose."

It is our understanding that the question to be considered is whether such statute requires the clerk to file a statement of all money, including that belonging to the public and that belonging to individuals when it is deposited with the clerk in his official capacity.

Under the provisions of Section 483.025, RSMo 1959, the clerk is required to give bond, and this section provides that "the bond shall be conditioned that he will faithfully perform the duties of his office, and pay over all moneys which may come to his hands by virtue of his office,"

In State v. Callaway, 237 S.W. 173 (Mo. App.) the court said on page 175:

"When, therefore, the defendant clerk bound himself faithfully to perform the duties of said office according to law, he assumed, among other obligations, one

Honorable William S. Brandom

requiring him to pay over all money coming to his hand by virtue of his said office. State ex rel v. Moore, 74 Mo. 413, 41 Am. Rep. 322. . . ."

In the same case, the court said on page 176:

"The remaining question for our solution is whether the funds in question were received by defendant Callaway in his official capacity as clerk of the circuit court of Cass county, or whether he merely became bailee of the fund. If the former, he may be held liable as an insurer of the fund, but, if the latter, he may be held only in case he was negligent in the handling of the same.

"It is admitted that the fund in question passed into the hand of defendant clerk by order of the court. It was received by him by virtue of said order and deposited in the bank (since defunct) to his credit as clerk of said court, together with other funds that came into his hands as such clerk.

"Having decided that the judgment of the court in the bill of interpleader case cannot be collaterally attacked and that it must stand as to strangers to the action, we hold that the funds came into the hands of defendant clerk in his official capacity. . . ."

It is to be observed that the statute makes no distinction between public and private moneys. The clerk is recognized as the custodian of all moneys, whether public or private, paid into court and he is bound to safely keep them and pay them out pursuant to law or deliver them to his successor.

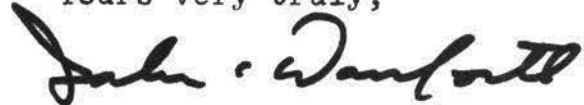
CONCLUSION

It is the opinion of this office that pursuant to the provisions of Section 55.220, RSMo 1959, the circuit clerk in second class counties is required to file with the county auditor a monthly statement showing all moneys and fees received by him by virtue of his office and all sums paid by him, to whom paid and for what purpose regardless of the source of such funds or of the persons entitled to receive payment.

Honorable William S. Brandom

This opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the printed name and title.

JOHN C. DANFORTH
Attorney General