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JEFFERSON CITY

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OPINION LETTER NO. 300
Answered by Klaffenbach

Honorable Samuel J. Short, Jr.
Prosecuting Attorney
Cedar County
2nd Floor Court House
Stockton, Missouri 65785



Dear Mr. Short:

This letter is in answer to your opinion request in which you ask the following:

"Is it the duty of a County Clerk in a 3rd Class County to furnish a Certified copy of an Order of the County Court to anyone requesting the same and willing to pay the statutory fee for same and if he is required to furnish said copy and refuses is he guilty of a Misdemeanor in office for failure to furnish said copy and may be removed from office for this failure to do so.

"Also may a County Court of a 3rd Class County, legally order the County Clerk to refuse to furnish a certified copy of its order to anyone requesting said copy and willing to pay the statutory fee for same. If the County Court may not legally so order, then are its members so ordering guilty of a Misdemeanor in office and subject to be removed from office."

You have also indicated that you wish an early reply and for that reason we have necessarily limited the extent of our research and the length of this opinion.

We note that we are not able to find any previous opinions of this office on the subject and likewise find no directly related Missouri cases.

The clerk's duties are set out in general terms in Section 51.120, RSMo 1969, and there is no where within that provision any express requirement that the clerk must provide such a certified

Honorable Samuel J. Short, Jr.

copy. However, it is quite apparent that there are many well established duties to such an office which are inherent and necessary to the proper discharge of the office. In this instance, we note that the fee schedule which is set out in Section 51.410, RSMo 1969, authorizes "[f]or every rule or order not hereinbefore specified, or copy thereof" a fifteen cent fee and also authorizes "[f]or every certificate and seal not hereinbefore provided for" a fifty cent fee.

Under Section 51.300, RSMo 1969, the clerk of the county court of such a county is placed on a compensation schedule and must deposit all such fees received by him in the county treasury. Further, under Section 51.390, RSMo 1969, it is the duty of such a clerk to charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county.

We note also that the Missouri Constitution Section 7 of Article VI requires the county courts to "keep an accurate record of its proceedings". The Legislature also has required that the clerk shall keep an accurate record of the orders, rules and proceedings of the county court and that he make a complete alphabetical index thereto. Section 51.120, RSMo 1969.

The present situation is of course somewhat complicated by the fact that the court was changed to an administrative body by the 1945 Constitution. Missouri Constitution Section 7, Article VI. However, it appears that a certified copy of the county court's order is still admissible in evidence despite the change in the status of the county court. That is, in State v. St. Clair, 262 SW2d 25, 28 (1953) the Missouri Supreme Court stated:

"[5] At the time the judgment was rendered, county courts were courts of record under the provisions of Art. 6, § 36, of the Constitution of 1875, V.A.M.S., and by the express provisions of Section 490.130 RSMo 1949, V.A.M.S., copies of their proceedings, attested by the clerk, with the seal of the court attached, are admissible in evidence. And, although such courts are no longer courts of record, yet, by the provisions of Art. 6, § 7, of the Constitution of 1945, V.A.M.S., they are required to keep an accurate record of their proceedings. Consequently, their records, certified as above stated, are admissible without further identification. State v. Worden, 331 Mo. 566, 56 S.W.2d 595, 598. . . . "

It is our view therefore that a person has a right to such a certified copy as long as he is willing to pay the statutory fee. Whether or not the clerk is guilty of a misdemeanor for failing to perform his duties pursuant to Section 51.270, RSMo 1969, depends

Honorable Samuel J. Short, Jr.

upon whether his conduct can be shown to have been willful or corrupt. State ex rel v. Hixon, 41 Mo. 211 (1867). See also State ex rel v. Bowen, 41 Mo. 217 (1867). Of course any such clerk who is convicted for any misdemeanor in office could be removed from office. Section 51.250, RSMo 1969.

Inasmuch as we have concluded that the county clerk must furnish a certified copy of an order of the county court to any person willing to pay the statutory fee for such an order, it follows that the county court is without authority to order the clerk to refuse to furnish such a certified copy since such an order would be in effect ordering the clerk not to perform his duty. Whether or not the County Judges are then guilty of a misdemeanor in office and subject to be removed is a question we would not venture to answer for the reason that under these circumstances a conclusion based upon this question would be too speculative. The Missouri Supreme Court has expressed its views with respect to such actions in State v. Fletchall, 412 SW2d 423 (1967).

Very truly yours,

JOHN C. DANFORTH
Attorney General