



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

August 19, 1975

OPINION LETTER NO. 187

JOHN C. DANFORTH  
ATTORNEY GENERAL

Honorable George W. Lehr  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Lehr:

This letter is in response to your request for an opinion of this office in which you inquired if circuit clerks in third and fourth class counties are required to turn over to the county treasury fees collected for issuance of United States passports.

Federal regulations authorize circuit clerks to execute applications for passports and charge a fee for the service. 22 C.F.R. §§ 51.21 and 51.61.

Section 50.334, RSMo, states, in part:

"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: . . ."

Enclosed is a copy of Opinion No. 88, Parker, January 19, 1970, in which this office, among other things, expressed its view that the provisions of Section 50.334, RSMo, precluded a circuit clerk from retaining a fee for collecting bar enrollment fees.

Honorable George W. Lehr

It is our view that the reasoning of that opinion is applicable to this question. In Opinion No. 88 we stated:

". . . 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. . . ."

It is our view that any fee received by a circuit clerk for passport issuance is a fee received in his official capacity for performing an official duty. Therefore, this fee must be accounted for and turned over to the county treasury pursuant to Section 50.360, RSMo.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 88  
1-19-70, Parker