COUNTY CLERKS: Entitled to count printed words in calculating fees due under Section 10007 R. S. Mo. 1929.

Cross index under fees.

August 30, 1933

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Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

Acknowledgment is herewith made of your request for an opinion of this office, your request reading as follows:

> "Is the County clerk entitled to charge 10¢ per hundred words for copying the tax book under authority of Sec. 10007, R. S. Mo. 1929, for those words already printed in the tax book as furnished by the County Court at its expense?"

For convenience, we herewith quote the portions of Section 10007 R. S. Mo. 1929, under which he is allowed these fees:

> "The following fees and compensation shall be allowed to the several officers and persons herein named for services rendered under the provisions of this chapter, vis:
>
> 1. To Clerks.--To the clerk of the county court, * * *
>
> 2. For making a copy of the tax book for the use of the collector, including certificate and seal to the same, for every hundred words and figures, ten cents, one-half to be paid by the state, and other half by the county; * * * *"

From a reading of the statute, we must admit that the wording of the section does not materially assist us in determining the question at hand. It is true that "services rendered" implies the fees or compensation are to be in consideration of additional services required, and accordingly the compensation should be in proportion to the services rendered and work required of the

County Clerk in "making a copy." However, on the other hand, "a copy" contemplates a completed whole, a finished and completed tax book, which is not such until the last word is written and until certified and authenticated as a true copy of the assessor's book. It is the latter consideration which is controlling in the present issue.

Section 9876 R. S. Mo. 1929, (now repealed, but which was effective until July 24, 1933, and controlls the making of all tax books up to that date) reads in part as follows:

> "As soon as the assessor's book shall be corrected and adjusted, the clerk of the county court, except in St. Louis city, shall, within ninety days thereafter, make a fair copy thereof, with the taxes extended therein, authenticated by the seal of the court, for the use of the collector;* * *"

The authentication above required is essential to the validity of the tax book. This has been repeatedly held by our courts. In the case of Burke v. Brown, 148 Mo. 309, the Court was considering the validity of a tax sale. It was admitted (l.c.313) that the tax books

> "did not contain a certificate that the same was a true copy of the assessor's book of the year of which it is purported to be the tax book, and that said books are not authenticated by the seal of the county court, or the certificate of the clerk of said court.* * *"

The Court held the sale to be void and the collections under such a tax book to be illegal exactions. This is found on page 316:

> "* * *It is admitted now that there was an entire omission, in all the years for which these taxes were paid, to authenticate the tax books, as required by the foregoing section; and the same remarks, therefore, apply here as in Howard v. Heck, supra, where it was said to 'follow from these premises that the so-called tax books, not being authenticated in any manner whatever, can not be regarded in any other light than mere unofficial lists, bearing on their face none of the insignia of authority.' It must be conceded, then, that when the tax

> collector assumed to act upon these unofficial lists, he was proceeding without authority of law, and his acts were, in effect, the same as if he himself, of his own volition, had made such lists. He has no 'tax books,' properly so-called; nor were these several amounts, which the collector got from Howard, valid and legal taxes. They were mere illegal exactions, to which the State was not entitled and which the landowner was under no obligation to pay." " "

From the foregoing, there is no doubt but that a heavy responsibility rests upon the County Clerk to make an accurate copy of the assessor's books, to know that such copy is true and accurate and to certify to such fact under the seal of the court.

Having determined the foregoing, it is fundamental that this responsibility rests upon the clerk just as certainly and in the same degree respecting the portions which are printed as the portions which are written in by the clerk in completing the tax book.

Your exact question has never been determined by the Courts of this State, but in view of the foregoing statements, it is our opinion that the rulings of the Courts of Appeals in the cases hereinafter referred to, control the instant question.

The St.Louis Court of Appeals, in the case of State ex rel. Huebler, v. Board of Police Commissioners, 108 Mo.App.98, considered the question of compensation due the Circuit Clerk for issuing six writs of mandamus at $1.00 each and six copies of the petition attached thereto at $13.30 each. The principal issue was the clerk's claim for 6 copies of the petition at $13.30 each. The following is found on page 102;

> " " "The clerk is allowed as costs for drawing, sealing and entering every 'writ' original or judicial, and filing and docketing the same, the sum of $1, and 'for copies of records and papers, for every hundred words, ten cents.'" " "

The complaining party had furnished the clerk with the necessary copies of the petition, to be attached to the writs, and objected

to paying the clerk for the "copies" at the rate of ten cents for every hundred words. The party charged with these costs took the position that the statute allowing fees must be strictly construed, that the services for which the fee was claimed were not actually performed; and that the burden of establishing the charge was on the clerk claiming it. The Court, in considering these points, stated on page 104:

> "* * *It is contended that inasmuch as the clerk used these printed copies, he is not entitled to compensation as for 'copies.'
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> The costs taxed for copies are a part of the emoluments of the office necessary to discharge the expenses of the office, such as the hire of clerks employed to make copies, and the clerk can not be deprived of such compensation, by reason of the fact that parties make and furnish to him copies of their petition.
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> Such copies thus furnished are not in the eye of the law, legal 'copies.' 'Copies' for which a charge can be made are the 'copies' issued and certified to be copies, under the hand of the clerk, with the seal of the court attached, as in the case at bar. Muerhead's Case, 13 Ct. of Claims,251.***
>
> As contended by the appellant, an officer of the court claiming fees for services must be able to put his finger on some statute expressly allowing the fee he claims, and if he is unable to do so he is not entitled to the fees. And it is also true that statutes regulating costs should be strictly construed. But it is equally true that the Legislature has provided compensation in the way of fees to the clerks of the circuit courts for services which the law requires them to render and when it appears they have rendered such services they ought not to be deprived of the fees allowed for like services because the extraordinary and particular procedure in which the services were rendered is not specifically named in the statute.***"

The foregoing ruling was affirmed and cited in the decision of the Kansas City Court of Appeals in the case of Blackwater Drainage District v.Borgstadt, 163 Mo. App. 151. In this case the plaintiff moved to quash defendant's fee bill, covering fees due as Clerk of the Circuit Court of Johnson County. A substantial portion of this $4,057.25 fee bill was for issuing 229 summonses with copies of the petition attached. In this case, too, the forms for the summonses and petitions were furnished to the clerk. The Court, in allowing these fees to the clerk, stated on page 153:

> "* * *But it is claimed that the clerk did not do the work; that copies of summons and petition were prepared and printed for him. This contention leaves out of view one of the chief considerations which support a statutory fee, and that is, responsibility. If by any means the clerk had caused damage by sending out papers which were not copies, he and his bondsmen would have been liable. As said by the St.Louis Court of Appeals in State ex rel. v. Board of Police Commissioners, 108 Mo. App. 98: 'Such copies thus furnished are not in the eye of the law legal 'copies'. 'Copies' for which a charge can be made are the 'copies' issued and certified to be copies, under the hand of the clerk, with the seal of the court attached, as in the case at bar.'
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> It is a matter which we judicially know, that nearly all process and official acts are issued upon what are known as printed blanks, filled in by the officiating officer, and we have not heard challenged his right to charge for the printed words." * * *

Without doubt, responsibility rests upon the County Clerk to make a true and correct copy of the assessors book, and to know

and certify that such copy is true and correct. In view of the decisions hereinbefore referred to, it is the opinion of this office that the County Clerk is entitled to include the words already printed in the tax book in calculating the total number of words in the tax book for which he is to be paid under Section 10007 R. S. Mo. 1929.

Respectfully submitted,

HARRY G. WALTNER, JR.,
Assistant Attorney General.

APPROVED:

Attorney General.

HGW:MM