

County Clerk
COUNTY OFFICERS:

County clerk has duty of performing ministerial acts in the management of county school fund mortgages.

August 18, 1943

8/26



Hon. Virgil H. Black
Treasurer and Ex-officio Collector
Daviness County
Gallatin, Missouri

Dear Mr. Black:

The Attorney-General wishes to acknowledge receipt of your letter of August 14, 1943, in which you request an opinion of this Department. Your opinion request, omitting caption and signature, is as follows:

"I want an opinion as to whether the employment by the County Court of the undersigned, County Treasurer and Ex-Officio Collector of Daviness County, to check on the school loans belonging to the County and Township School Funds, as to taxes, insurance, interest, rent the properties taken over--or in other words keep these loans up to date, as in a bank, at which I have had 16 years experience, at a salary of \$25.00 monthly, is there anything incompatible or against the public policy in this extra employment. Sure would earn the money and it would be money well spent by the court.

"As I hold the two offices--would both or either of them fit the place."

We do not construe your problem as containing the question of incompatibility of two offices. It is primarily a question of what person or office has the responsibility for the administering of the duties as required by law relative to the county school fund loan.

The county courts of the several counties in the State of Missouri have the duty of managing the county school funds and to make loans therefrom. This duty is given the county courts in Section 10376, R. S. Mo. 1939, which provision is as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

Of course, the county court in this State is a court of record, and the officer having custody, charge and control of the records of such court and having the duty of keeping such records, is the county clerk. It is undoubtedly common knowledge that the county clerk waits upon the court and either he or his deputies keep the minutes of its meetings.

We also wish to call to your attention Section 13295, R. S. Mo. 1939. This section of the statutes deals generally with the duties of the clerks of all the courts of record, which, of course, necessarily includes the county clerks of the various counties. The provisions of the aforesaid section are as follows:

"Every clerk shall record the judgments, rules, orders and other proceedings of the court, and make a complete alphabetical index thereto; issue and attest all process when required by law and affix the seal of his office thereto, or if none be provided, then his private seal; keep a perfect account of all moneys coming into his hands on account of costs or otherwise, and punctually pay over the same; Provided, that where the clerk of the circuit court is a party, plaintiff or defendant (whether singly or jointly with others) to a suit or action, the writ of summons and all other process shall be issued by the clerk of the county court, the reason therefor being noted on said process, and said latter named clerk shall, on the trial of said cause, act as temporary clerk of the circuit court and otherwise perform in said cause all the duties of the circuit clerk."

The above quoted section is self explanatory and we feel demonstrates that it is the duty of the county clerk to perform the duties above which you speak of in your request for an opinion. However, we wish to further cite you the provisions of Section 13823, R. S. Mo. 1939. This section refers to the duty of the county clerk to keep all of the accounts due the county. Due to the length of this particular section of the statute we will only refer you to that part of the section which is of interest in this opinion. Said pertinent part is as follows:

"* * *; second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom; * * * *"

From the authorities cited above we feel that it is clear that the duty "to check on the school loans belonging to the County and Township School Funds, as to taxes, insurance, interest, rent the properties taken over--or in other words keep these loans up to date," as stated in your request, is the duty of the county clerk, which duty is imposed upon him by the aforesaid statute.

Could we then say that the county court could employ and pay another person to perform the duties of an officer who is already under direction by statute to perform such duties and who receives compensation therefor? We think not. It is a familiar rule of law that a county court may not expend moneys of the county, unless they are specifically authorized so to do by the statute, or unless the expenditure is incidental to the performance of the duty which is prescribed by law. The county court is directed by law to take charge of the administration and loaning of school fund moneys and the county clerk is compensated for the ministerial acts pertaining thereto. Therefore, it would be outside the authority of the county court to pay any person to attend to these duties, other than the county clerk.

In view of the foregoing it seems unnecessary to pass upon the question of the incompatibility of the offices of treasurer and ex officio collector and the office of deputy county clerk. We specify "deputy county clerk" for the reason that we feel the only persons qualified to perform the duties set out in your letter, are the county clerk and his deputy. Even if a person holding the office which you now hold could be appointed deputy county clerk, the county court could not under the law pay an additional fee to such deputy county clerk for the duties which you have set out in your request for an opinion.

August 18, 1943

Conclusion

Therefore, it is the opinion of this Department that the duty as set out in your request for an opinion, is one which is placed upon the county clerk and which should not be performed by any other officer; further, that the county court has no authority to appoint a treasurer and ex officio collector to perform any part of the duties of the county clerk of any county.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG