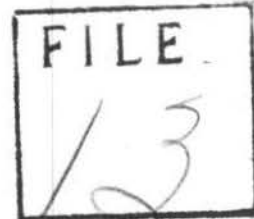


COUNTY CLERKS:
FEES:

County Clerk not entitled to fee for filing
declaration of candidacy.

May 21, 1942

Honorable Chas. B. Butler
Prosecuting Attorney
Doniphan, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of May 19, 1942, as follows:

"County Clerks here have been charging justices of the peace and constables fifty cents for filing their declarations as candidates for township offices in the primary elections.

"I am unable to find any justification for such charges and would like to have your opinion in the matter."

The declarations referred to by you, which must be filed by justices of the peace and constables, are required by Section 11550, R. S. Mo. 1939, which is as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:

May 21, 1942

I, the undersigned, a resident and qualified elector of the (_____ precinct of the town of _____), or (the _____ precinct of the _____ ward of the city of _____), county of _____ and state of Missouri, do announce myself a candidate for the office of _____ on the _____ ticket, to be voted for at the primary election to be held on the first Tuesday in August, _____, and I further declare that if nominated and elected to such office I will qualify.
(Signed) _____."

Section 11553, R. S. Mo. 1939, requires the declaration to be filed in the office of the county clerk, or in the office of the election commissioners of the City of St. Louis when the candidates are competing for an office to be voted for by electors wholly within the County or City of St. Louis.

We are unable to find either in the provisions of our statutes relating to elections or in those provisions relating to fees to be charged by county clerks for the performance of their official duties any mention of a fee which may be charged for filing the declaration above described. We are also unable to find any provision granting the secretary of state a fee for the performance of a similar service in the case of candidates for state offices, representatives in congress, courts of appeals, circuit judges, and those members of the general assembly whose districts comprise more than one county.

The rule in a case of this kind is well recognized and has been recently expressed by our Supreme Court in *Nodaway County v. Kidder*, 129 S. W. (2d) 857, as follows:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to

any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

CONCLUSION

It is, therefore, the conclusion of this department that the county clerks of the various counties of the state are not entitled to any fees for filing the declarations of candidates for township offices in the office of the county clerk as required by Section 11550, R. S. Mo. 1939.

Respectfully submitted

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

RLH:HR