

- CIRCUIT CLERKS: (1) Circuit Clerk of St. Louis County not entitled to fees in addition to his salary set by Section 13528, R. S. 1939.
- (2) Circuit Clerks are entitled to retain fee for bar enrollment as provided by Supreme Court Rules.

January 21, 1943.



Mr. Raymond O. Douglas  
Clerk Circuit Court  
St. Louis County  
Clayton, Missouri

Dear Mr. Douglas:

The Attorney-General wishes to acknowledge receipt of your letter of January 11, 1943, requesting an opinion of this Department. Your letter requesting such opinion, after omitting caption and signature, is as follows:

"I would like to have an opinion from the General's Office relating to the following R. S. Missouri 1939, Section #13408, 'Provided further that the Clerks of the Circuit Court shall be allowed to retain in addition to the sums allowed in this section, all fees earned by him in cases of change of venues from other counties.' This law is known as the Circuit Clerk's salary bill since the passage of this bill in the 1937 session of Legislature, under which I have operated until the first Monday of January, 1943, when I began my new term of office.

"According to laws of Missouri 1939 being titled 'Salaries and fees fixing salaries of county officers in counties of 200 to 400,000 inhabitants' under which I am classified, according to section one my salary is set out. I would like you to give me an opinion as to whether or not I am entitled to these change of venue fees as provided under the Act of 1937."

"There is also the question according to Supreme Court Rule, which I believe is number 37, section 1, that the Clerk of the Circuit Court shall retain ten cents for each enrollment fee collected by him. I would like to know whether to retain these fees further, or pay them into the General Revenue fund of the county."

Your request seems to be upon two questions: First, as to whether or not under the present law relative to circuit clerks, the Circuit Clerk of St. Louis County has the right and privilege to retain all fees earned by him in cases of change of venue from other counties; Second, as to whether or not the circuit clerks have the authority to retain the fee of ten cents on each bar enrollment fee paid in their respective circuits.

#### I.

Taking up question number one, we will first cite you to Section 13408, R. S. Mo. 1939, which is the old statute which governed the salary and fees of the circuit clerks of the State of Missouri, and providing as follows:

"The clerks of the circuit courts of this state shall receive for their services annually the following sum: In counties having a population of less than seven thousand five hundred persons, the sum of twelve hundred (\$1200) dollars; in counties having a population of seven thousand five hundred persons and less than ten thousand persons, the sum of fifteen hundred (\$1500) dollars; in counties having a population of ten thousand persons and less than fifteen thousand persons, the sum of seventeen hundred (\$1700) dollars; in counties having a population of fifteen thousand persons

and less than seventeen thousand five hundred persons, the sum of nineteen hundred (\$1900) dollars; in counties having a population of seventeen thousand five hundred persons and less than twenty thousand persons, the sum of twenty-one hundred (\$2100) dollars; in counties having a population of twenty thousand persons and less than twenty-five thousand persons, the sum of twenty-three hundred (\$2300) dollars; in counties having a population of twenty-five thousand persons and less than fifty thousand persons, the sum of twenty-five hundred (\$2500) dollars; in counties having a population of fifty thousand persons and less than seventy-five thousand persons, the sum of thirty-six hundred (\$3600) dollars; in counties having a population of seventy-five thousand persons and less than one hundred fifty thousand persons, the sum of four thousand (\$4000) dollars; in counties having a population of one hundred fifty thousand persons and less than four hundred thousand persons, the sum of five thousand (\$5000) dollars; Provided, that in any county wherein the clerk of the circuit court is ex officio recorder of deeds, said offices shall be considered as one for the purpose of this section: Provided, it shall be the duty of the circuit clerk, who is ex officio recorder of deeds, to charge and collect for the county in all cases every fee accruing to his office as such recorder of deeds and to which he may be entitled under the provisions of section 13426 or any other statute, such clerk and ex officio recorder shall, at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of such circuit clerk and ex officio

recorder of deeds, upon the filing of said report, to forthwith pay over to the county treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the county clerk, and every such circuit clerk and ex officio recorder of deeds shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the county treasury as herein provided; Provided further, that the clerks of the circuit courts shall be allowed to retain in addition to the sums allowed in this section, all fees earned by him in cases of change of venue from other counties; Provided further, that until the expiration of their present term of office, the persons holding the office of circuit clerk shall be paid the maximum amount as now provided by law, in the manner provided by this chapter."

However, in 1939 a new statute was passed which governed circuit clerks and other officers in counties which contained two hundred to four hundred thousand inhabitants. The section setting forth the salary of the circuit clerks and other officers in such counties, is Section 13528, R. S. Mo. 1939. This section reads as follows:

"In all counties in this state which now have or may hereafter have a population of not less than 200,000 inhabitants and less than 400,000 inhabitants according to the last Federal decennial census, the following salaries shall be paid the hereinafter named officers, beginning with the term of office following the term for which the incumbent has been elected, or is serving at the time of the effective date of this article, to-wit: Clerk of the county court,

\$6750.00 per annum; collector of revenue, \$8750.00 per annum; county treasurer, \$6750.00 per annum; recorder of deeds, \$6750.00 per annum; circuit clerk, \$6750.00 per annum; sheriff, \$8750.00 per annum; coroner, \$5000.00 per annum; assessor, \$8750.00 per annum."

The question then arises as to whether or not the circuit clerks of such counties are authorized by statute to receive additional compensation in the form of fees which they might collect, and which in the instant request are the fees derived from the changes of venue from other counties. In answer to this particular question we wish to cite you to Section 13537, R. S. Mo. 1939, which reads as follows:

"All the salaries mentioned in section 13528 shall be in full of all services rendered by virtue of said officers and said annual salaries shall be paid in equal monthly installments out of the county treasury of said county. None of the officers or their employees hereinabove enumerated shall retain any fees, fines, costs, commissions, penalties or charges collected by virtue of their office under the laws of this state but all the fees, fines, costs, commissions, penalties or charges shall be paid into the county treasury and they shall be the property of said county. The county court of said counties shall determine by proper order when the fees, fines, costs, commissions, penalties or charges so collected by said officers shall be paid and turned over to the county treasury and how to be accounted for, and the county court shall require a sworn statement by said county officer or officers showing the items collected in detail, their source, character and the aggregate amount thereof, and shall require a copy of said sworn statement to be filed in the office of the comptroller of said county."

As can be seen from a study of this statute, the circuit clerks or other officers mentioned in Section 13528, supra, are forbidden to retain any fees, fines, costs, commissions, penalties or charges collected by virtue of their office under the laws of this State. Consequently, under the provisions of such section the Circuit Clerk of St. Louis County is not authorized to retain the fees which might come into his possession through changes of venue sent to his county from other counties.

In order that there might not be any conflict between former provisions and the provisions which have been cited above, Section 13538, R. S. Mo. 1939, provides as follows:

"All laws, or parts of laws inconsistent or in conflict with any provisions of this article are hereby repealed."

#### Conclusion.

Therefore, it is the opinion of this Department that Section 13408, R. S. Mo. 1939, does not apply to the circuit clerk's office of St. Louis County but that Sections 13528, 13537 and 13538, R. S. Mo. 1939, apply to such office and under such provisions the Circuit Clerk of St. Louis County is not authorized to retain any fees which might come into his possession due to changes of venue from other counties, and that such fees, if any, shall be paid into the county treasurer of St. Louis County.

#### II.

Question number two is whether the circuit clerks have authority to retain ten cents on each bar enrollment fee which is paid to their office under the provisions of Section 4 of Rule 37 of the Supreme Court of Missouri. Such section of Rule 37 provides as follows:

"All enrollment fees and penalties paid to the Circuit Clerks shall be forwarded to the Clerk of the Supreme Court on or before the 5th day of the month after that in which they were collected, together with a statement showing by whom each fee and penalty were paid.

"As compensation to the Clerks of the said Circuit Courts, at the time of remitting said Clerk may retain ten cents out of each annual enrollment fee. The Clerk of the Supreme Court shall file and preserve said statements and shall keep enrollment fees and penalties in a separate fund to be known as the 'Bar Fund' and to be paid out as hereinafter provided."

This rule, along with other rules, is promulgated by the Supreme Court of Missouri and does not amount to a law or statute of such State. However, they are a set of rules under which the Supreme Court is governed and also under which the practicing attorneys of this State must proceed.

The law relative to the salaries of the different county officers provides that where a definite salary is set by statute that the officers do not have authority to collect additional compensation. This rule of law was set out in *Nodaway County v. Kidder*, 129 S. W. (2d) 857, 344 Mo. 795. However, the duty placed upon the clerks by the Supreme Court rule aforesaid is not a duty placed upon him by statute but seems to be an additional duty set by the Supreme Court of this State. By the law as set out in *Smith v. Pettis County*, 136 S. W. (2d) 282, 345 Mo. 339, we feel that the Circuit Clerks of this State are entitled to retain the ten cents on each annual bar enrollment fee as set out in Section 4 of Rule 37 of the Rules of the Supreme Court of Missouri.

#### Conclusion.

Therefore, it is the opinion of this Department that in view of the fact that the duty placed upon the circuit



Mr. Raymond O. Douglas

-8-

Jan. 21, 1943

clerks of this State by Section 4 of Rule 37 of the Supreme Court is an additional duty to those placed upon such officers by the statutes of this State, that the circuit clerks are authorized to retain ten cents of each bar enrollment fee as provided in such Supreme Court Rule.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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