

CIRCUIT CLERK AND) : Cannot retain fees set out in Section 3248
EX-OFFICIO RECORDER: R.S. Missouri, 1929, in addition to salary.

January 4, 1938

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Hon. Melvin Englehart
Prosecuting Attorney, Madison County
Fredericktown, Missouri

Dear Sir:

This department is in receipt of your letter of
December 21, 1937, which reads as follows:

"In re: Section 3248 R.S. Mo. 1929,
Article 2, Chapter 26.

"The above mentioned section provides:
'For making the transcript provided
for in Section 3246 in this Article,
the recorder shall be entitled to
such compensation as may be allowed
by the County Court, not to exceed
eight cents for every hundred words
and figures so transcribed, to be
paid out of the county treasury.'
Section 3246 provides that when any
books or records belonging to the
recorder of deeds in any county are
in a ruinous condition, the court
shall direct the recorder of deeds
to transcribe such record in a new
and suitable book. Is the compen-
sation provided for in Sec. 3248 a
part of the fees earned as provided for
in Section 11786, laws of 1937?

"Under the present law, passed by the
Legislature in 1937, the Circuit
Clerk now receives a salary of \$1700.
per year, exclusive of deputy hire, in
a county of the population of Madison
County, Missouri, and I would like to
know if the fees provided in Section
3248 are a part of his salary of \$1700
per year, or does he receive the fees
set out in Sec. 3248 in addition to his
salary?"

Salaries of Circuit Clerks are governed by Section 11786, page 445, Laws of 1937.

In the case of Perkins v. Burks et al., 78 S.W. 2nd 845, l.c. 849-50, will be found a thorough discussion of the various statutes relating to the compensation of Circuit Clerks, and from that discussion, which is too lengthy to include in this opinion, it is clear that the legislature intended by the present act (Section 11786) to provide full compensation for this officer for his services as Clerk of the Circuit Court and ex-officio Recorder of Deeds by the salary therein provided for and the change of venue fees therein mentioned. In said case, after discussing the history of such legislation, the court said (l.c. 850):

"It is only possible to clear up the meaning of these sections by going to the Laws of 1915 for the original enactment. When this is done, it is clear that section 10995, R.S. 1919, now section 11786, R.S. 1929, is the only statute which provides for the compensation of circuit clerks."

In the foregoing case, the court was considering Section 11786, R.S. Missouri, 1929. That section was repealed in 1933 (page 369, Laws of 1933) and a new section bearing the same number was enacted. The said section of the 1933 laws was repealed in 1937, and the present Section 11786, page 445, Laws of 1937, was enacted. There is no change in the present statute in the method of payment of this officer, but the 1937 statute, together with Section 11813, page 447, Laws of 1937, further clarifies the intention of the legislature to provide a method of compensating the Circuit Clerk and ex-officio Recorder of Deeds by having him turn all fees collected by his office, except change of venue fees, into the county treasury and receive back from that treasury a salary.

Section 11786, as it now appears in Laws of 1937, after determining the amounts of salaries for Circuit Clerks in the various counties, reads as follows:

"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 11804 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."

It is clear from the foregoing that the fees provided by Section 3248, R.S. Missouri, 1929, are a part of the fees accruing to the office of the Recorder of Deeds and should be turned over to the County Treasurer.

Hon. Melvin Englehart

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CONCLUSION

It is, therefore, the opinion of this department that the Circuit Clerk and ex-officio Recorder of Madison County cannot retain the fees set forth in Section 3248, R.S. Missouri, 1929, in addition to the salary provided for him by Section 11786, page 445, Laws of 1937, but it is his duty to turn said fees into the county treasury.

Respectfully submitted,

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APPROVED BY:

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