

PROSECUTING : Payment of statutory fees by warrant or  
ATTORNEYS voucher should be made to prosecuting  
attorney and, in his absence, endorsed  
by assistant.

June 12, 1944



Honorable J. B. Gallagher  
Assistant Prosecuting Attorney  
Moniteau County  
California, Missouri

Dear Mr. Gallagher:

This is an acknowledgment of your letter of inquiry  
to the General, which is as follows:

"I desire your opinion as Assistant Prosecuting  
Attorney on the following question. I file  
criminal cases in the Circuit Court in my name  
(as Assistant Pros. Att'y). I am not a deputy  
but by law have the same powers as the Pros.  
Att'y. However, the Circuit Clerk's Office  
insists that all checks for the fees due the  
Assistant Pros. Att'y. shall be made payable  
to the Pros. Att'y. who is in the Service. The  
Pros. Att'y. is now stationed in Michigan at a  
training camp. He may be sent over seas.

"I insist that the fees in all cases I have filed  
and will file should be made payable to me as  
Assistant Pros. Att'y. as I must collect and  
deposite them with the County Treasurer, file the  
receipts with the County Clerk and make the  
Quarterly Reports of the fees collected in my  
name to the County Court as is provided by law.  
I feel reasonably certain I am correct."

Section 12962, R. S. Mo. 1939, is as follows:

"Each prosecuting attorney in this state may  
appoint one assistant prosecuting attorney,  
who shall possess all the qualifications of  
a prosecuting attorney, and be subject to all  
the liabilities and penalties for failure or  
neglect to discharge his duty to which prose-  
cuting Attorneys are now or may hereafter be  
made liable."

Section 12963 thereof is as follows:

"The appointment of said assistant prosecuting attorney shall be made in writing and signed by the prosecuting attorney, and they shall take and subscribe to the oath of office required of prosecuting attorneys, which appointment and oath of office shall be filed in the office of the clerk of the circuit court of the county."

Section 12964 thereof is as follows:

"The assistant prosecuting attorney shall discharge the duties of the prosecuting attorney when the prosecuting attorney is sick or absent from the county, or when the prosecuting attorney is engaged in the discharge of the duties of his office, so that he cannot attend. The assistant prosecuting attorney shall be paid only by the prosecuting attorney, and may assist the prosecuting attorney at his request in any case: Provided, that he shall not be disqualified from defending in any case, civil or criminal, except those in which he shall have acted as assistant prosecuting attorney."

Section 12939, R. S. Mo. 1939, provides for an annual salary, payable monthly, upon warrant of the county court, to your prosecuting attorney. The fees collected by him should be paid to the officer designated by statute to receive them. When the statute requires fees to be paid to the prosecuting attorney and by him paid to a designated official such procedure should be followed.

In the case of State ex inf. McKittrick v. Wilson the Supreme Court En Banc held that an office holder going away to war did not create a vacancy. A copy of such opinion is enclosed herein.

The duties of a Prosecuting attorney absent in military service should be discharged in his name by the statutory assistant acting in his behalf during such absence when so directed by legislative acts.

Hon. J. B. Gallagher

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CONCLUSION

Therefore, in view of the above statutes, it is the opinion of this department that when fees are required by statute to be paid to a prosecuting attorney and by him paid to a designated official, such warrants or voucher should be made to the prosecuting attorney and, in his absence in military service, his legally appointed assistant should endorse said warrants or vouchers in the name of the prosecuting attorney by himself as assistant.

Respectfully submitted,

SVM:EH

S. V. MEDLING  
Assistant Attorney General

APPROVED

ROY MCKITTRICK  
Attorney General