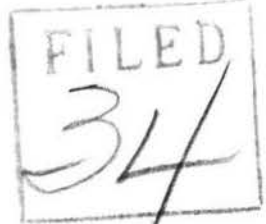


PROSECUTING ATTORNEY:

Entitled to no fee from Coun
for examination of abstracts
for School Fund Loans.

2-20

February 19, 1935



Honorable W. D. Griffin
County Clerk Barton County
Lamar, Missouri

Dear Sir:

This is to acknowledge receipt of your letter
of February 6, with request for an opinion, which letter
is as follows:

"The County Court would like your opinion
in regards to our County Attorney fees
for examining abstracts for School loans.
The Court would like to know if they are
to pay him? If so, how much?

Would you please let me know at once?"

I.

Sections 9243, 9244 and 9245 R. S. Mo. 1929,
provide how and in what manner the county school funds,
township school funds and capital school funds shall be
loaned by the county courts of the respective counties,
and section 9251 provides, among other things,

"When any monies belonging to said
funds shall be loaned by the county
courts, they shall cause the same
to be secured by a mortgage in fee
on real estate within the county,
free from all liens and encumbrances,
of the value of double the amount of
the loan, with a bond, and may, if
they deem it necessary, also require
personal security on such bond* * *.

But before any loan shall be effected, the borrower shall file with the county court an abstract of title at the time he files his bond and mortgage to the real estate which is to be mortgaged."

The statutes place the obligation for the making of county school fund loans on the county court and it is their duty to see that all of the requirements of the law have been complied with, and, necessarily, the abstract of title furnished by the borrower of school monies must be examined by one competent to pass on same and this duty devolves upon the prosecuting attorney.

II

Your inquiry is whether or not the prosecuting attorney is entitled to any fee from the county court for examining abstracts for school loans, and, if so, how much he may charge.

The prosecuting attorney is the legal adviser of the county court, as well as all other county officials, in all matters pertaining to their official duties. For any service that the prosecuting attorney performs for any county official, such as the county court in this instance, he must be able to point to the statute which allows him any fee or compensation for that service.

The rule is stated in C. J. 18, page 1319,

"At common law those who accepted public office were presumed to give their services. The right of a prosecuting attorney to compensation is therefore purely statutory; he is not entitled to any salaries, fees or costs except as expressly provided by law."

The rule has been stated in Missouri in the case of King v. Riverland Levee District 279 S. W. 195, 1. c. 196,

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. State ex rel. Evans v. Gordon, 245 Mo. 12 loc.cit. 27, 149 S. W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504. Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for 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 the same."

Section 11318 R. S. Mo. 1929, enumerating some of the duties of the prosecuting attorney, says the following:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor
* * * * *"

Honorable W. D. Griffin

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February 19, 1935

We do not find any statute in Missouri whereby the prosecuting attorney can charge any fee to the county court for examining abstracts of title for school fund loans, and we think that it is one of the general duties of the prosecuting attorney and that he is entitled to no fee, from the county court, for examining such abstracts of title.

CONCLUSION

It is therefore our opinion that the prosecuting attorney cannot charge the county court a fee for examining abstracts of title for school fund loans.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

CRH:LC