

CIRCUIT CLERK: Fees for special recordings are non-accountable.

April 23, 1943

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Hon. Max E. Hall
Clerk of Circuit Court
Lawrence County
Mt. Vernon, Missouri

Dear Sir:

Under date of April 6, 1943, you wrote this office requesting an opinion as follows:

"When the Circuit Clerk records an Order of Publication in the Vacation Court Record, in a Civil Suit, for the purpose of obtaining service on a non-resident, or unknown defendants, etc., please advise us what fees are taxed for same. Does Circuit Clerk retain any of this fee?"

"The former Clerk here has taxed,
Order for Publication \$.30
Issue Publication 1.00
Record Publication 1.00

"He has retained the latter fee of \$1.00, for recording this publication to obtain service as his own personal fee, and the other \$1.30 cents he turned in as an accountable fee to the county. The way we understand this is, that the above would come under Section 13296, Revised Statutes of Missouri, 1939, and would be an accountable fee, but if the party would make a request for this paper or roll, to be recorded in the Vacation Record so as to have a complete record, other than the original, then the Clerk would receive a fee under Section 13297, Statutes as above, of 10 Cents per hundred words for recording same and it would be a non-accountable fee."

The salary of Circuit Clerks is fixed by Section 13408, R. S. Mo., 1939. This section begins as follows:

"The clerks of the Circuit Courts shall receive for their services annually * * * *(here follows the salary brackets)

The section applies also to Circuit Clerks who are ex officio recorder of deeds and the section further contains the following provision:

"* * * 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: * * *" (Under scoring ours)

Section 13408 was enacted by the general assembly in 1937. Prior to that time, for a few years, Circuit Clerks were paid on a fee basis. Section 13408 was the second section of

House Bill 177, Section I of the Bill repealed Sections 11786, 11808, 11811, 11812, 11813 and 11814 as enacted by the 57th general assembly in 1933. At the same time Section 13436, relating to the fees of the office of the Clerk of the Circuit Court, was enacted as fifth section in the Bill. This Section is as follows:

"It shall be the duty of the clerks of all circuit courts to charge and collect for the county, in all cases, every fee accruing to their offices under the provision of sections 13407, 13409, and 13410, or any other statute, and if such fees be not paid when due by the party liable for the payment, it shall be the duty of the clerk to forthwith issue a fee bill for same and place such fee bill in the hands of the sheriff of the proper county, who shall forthwith levy same on the persons liable therefor, or their sureties, as authorized and provided by section 13398. Such clerk shall, at the end of each month, file with the county clerk a report of all fees paid and accruing to his office during such month, the date of accrual to be determined as the date of the final disposition of the case, stating the title of the case or on what account such fees were charged, together with the name of the persons who are liable for same, with the names of all sureties, where security of costs have been required, and which report shall also show what fee bills, if any, have been issued and for what fees and when placed in the hands of the sheriff for collection, and further stating that, after due diligence, he has been unable to collect the fees reported unpaid and which said report shall be verified by the affidavit of such clerks. And monthly, such clerks shall pay into the county treasury the amount of all fees collected by virtue of his office and every clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided

by law. It shall be the duty of the county court to examine such monthly reports and to require of the prosecuting attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, and, to that end, such prosecuting attorney shall have authority, at any time, to direct the issuance of any execution or fee bill for costs in any case in which any costs accruing to the county are unpaid."

Sections 13407, 13409 and 13410, mentioned in this section prescribe fees to be charged by clerks of Circuit Courts, in civil suits, criminal proceedings and naturalization proceedings respectively. At the times both of the amendments to the Circuit Clerks Compensation Act, 1933 and 1937, were passed, what is now Section 13297 was an existing statute and was Section 11678 R. S. Mo., 1929.

Section 13297 mentioned herein is as follows:

"All clerks of the circuit court shall receive as compensation for recording papers under section 13296 of this article the sum of ten cents per one hundred words, to be retained by said circuit clerks, and said clerks are not required to account for same in their annual or quarterly settlements."

Section 13296 referred to in Section 13297 commences as follows:

"In all civil actions any party interested therein may, upon payment of the fees, have any or all of the following papers recorded in the office of the clerk of the circuit court in the county in which such action is brought: * * *"

These last two sections contain the authority for making special recordings and charging fees for such recordings, which fees are the subject of your inquiry.

At first glance, it might seem that Sections 13408 and

13436 had repealed, by implication, the clause of Section 13297, making the fees for special recordings non-accountable fees. For the reason that by the terms of the provision quoted from Section 13408 and underscored and Section 13436, the Circuit Clerks who are ex officio recorders and Clerks who are not ex officio recorders are required to collect and account for every fee accruing to the office under the provisions of Section 13426 or any other statute and Sections 13407, 13409 and 13410. Section 13426 prescribes the fees which a recorder of deeds shall charge so that this clause treats only of the fees which shall be charged, collected and accounted for by a Circuit Clerk, who is ex officio recorder, for services as recorder of deeds. The other three Sections, 13407, 13409 and 13410, treat of fees to be charged for services as Clerk of the Court in connection with litigation.

The fees prescribed in Sections 13407, 13409 and 13410 are for services that are essential to the carrying on of the business of the office and which are necessary to the proper conduct of the litigation.

It might be said that Section 13408 and 13436, being later sections, would take precedence over any portion of 13297 if there was any conflict between the sections. However, Sections 13408 and 13436 are general sections treating of all the whole compensation of Circuit Clerks and the fees to be charged for services necessary to litigation, and Section 13297 is a special section fixing compensation for an optional service which a litigant may request if he so desires, but which service is not necessary.

In House Bill No. 177 of the 57th general assembly express mention is made of certain statutes which are repealed and for Sections 13408 and 13436, which were a part of House Bill No. 177 of the 57th general assembly, to take precedence over what is now Section 13297, it would be necessary to hold that these sections repealed, by implication, any conflicting portion of Section 13297. Repeals by implication are not favored.

State ex rel. Wells vs. Walker, 34 S. W. (2d) 124.

State ex rel. R. Newton McDowell Inc., vs. Smith
62 S. W. (2d) 50.

Further, in order that a repeal by implication may exist it is necessary that an irreconcilable conflict exist between the two statutes, R. Newton McDowell Inc., vs. Smith, 62 S. W. (2d) 50. And the law does not favor repeals by implication if by any

fair interpretation the two sections can stand together, there is no repeal by implication.

Briefly summarizing, we have three statutes treating of the compensation of Circuit Clerks and their fees. An earlier special statute fixing a non-accountable fee which the clerks may collect and retain for rendering to a litigant an optional service, and two later general sections fixing annual compensation for the clerks services and requiring the Clerks to charge, collect and account for fees. At first glance, there appears to be a possible conflict between these sections, but the earlier special statute would remain an exception to the later general statutes and the later general statutes would not repeal by implication the earlier special statute if by any fair interpretation the two could stand together. McDowell, Inc., vs. Smith, supra.

It is the view of the writer that Sections 13408 and 13436 do not have the effect of repealing, by implication, any portion of Section 13297 for the reason that the charge fixed by 13297 is for an extra service which is not necessary to the making of a complete record of a case in the office of the Circuit Clerk, but is for a service which has been authorized to be furnished at the option of a litigant, and which service is in the nature of an added duty, outside the scope of the duties of the office.

Sections 13407, 13409 and 13411, R. S. Mo., 1939, fixes the fee that may be charged and collected by Clerks of the Circuit Courts for services as clerks. These fees are accountable fees. A search of these sections fails to reveal any charge fixed for making special recordings.

CONCLUSION

It is, therefore, the conclusion of the writer that the fees authorized to be charged and collected for special recordings, by Section 13297, remain unaccountable fees which the Clerk may retain for rendering a requested service, and these unaccountable fees need not be included in the annual or quarterly settlements.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
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WOJ/mh