SALARIES AND FEES: Where the County Clerk performs services that are not officially his duty, the County
COUNTY COURTS: Court is authorized to pay him therefor if the services so performed are reasonably necessary county duties.

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Hon. T. R. McCracken,
County Clerk,
Salem, Missouri.

Dear Sir:

This acknowledges receipt of your inquiry which is as follows:

> "It has been a custom of the county court to pay the County Clerk a few dollars each month to take care of the telephone. This phone here in my office is the only phone in the court house, and therefore requires a great deal of time and energy running after people all over the court house and some times all over town to get the person that is wanted at the phone. For all of these services rendered I have been receiving only two dollars a month. The Auditors that are auditing my books inform me that I will have to refund all of this money that I have received for these services. The County court is saving at least $100.00 per year, by having only this one phone in the court house. This has only been a sacrifice for me to attend to the phone so cheaply. Do I really have to refund this money to the county? Please advise me."

Replying thereto, we understand your state of facts to be this: That there is only one telephone in your court house, that being in your office. The county court is paying the telephone dues on that phone. It serves the

purposes of your office in performing your official duties and in addition to that you carry messages from your office to the various other offices when calls are officially made for the other county officers who do not have telephones, and those officials come to your telephone and transact their official business in that regard. For your services and as compensation to you for carrying these messages to the other officials, your county court has by an order of record authorized or directed you so to do and has by order of record ordered warrants drawn to compensate you for those services that you performed in answering the telephone for the other officials and in going to the offices of the other officials and calling them to your telephone, such warrants being a total of approximately $25.00 a year.

Under the above state of facts, you desire to know whether the payment so made to you by the county court is lawful.

Replying thereto, if this payment of approximately $25.00 is made to you as compensation for your official acts, it would be necessary that some statute authorize the payment of the same, as fees or salaries are authorized only where there is a statute under the operation of which they may be paid to county officials.

In the case of State ex rel. Troll v. Brown, 47 S. W. 504, 146 Mo. 401, the doctrine is announced by the Supreme Court of Missouri that no officer is entitled to fees of any kind unless provided for by statute. It is not a matter of contract. No recovery could be had on the basis of quantum meruit. The Court stated at page 406 (Mo.):

> "It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory rights, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform as such officer, unless the statute gives it. When the statute fails to provide a

> fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

The same doctrine was later announced in the case of State ex rel. Evans v. Gordon, 149 S. W. 638, 245 Mo. 12, 27:

> "Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.
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> "Throop on Public Officers (Sec. 443) says: 'It has been often held, that an officer's right to his compensation does not grow out of a contract between him and the State. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office.'
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> "Mechem on Public Offices and Officers says: 'Sec. 856. Unless, therefore, compensation is by law attached to the office, none can be recovered. A person who accepts an office to which no compensation is attached is presumed to undertake to serve gratuitously, and he cannot recover anything upon the ground of an implied contract to pay what the service is worth.' * * *
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> "In Bank v. Refrigerating Co., 236 Mo. 414, Brown, J., speaking for the court, says: 'When the law requires a specific service to be performed by a public officer, he must perform that service regardless of whether any provision has been made to pay him for same.'

> "Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the KansasCity Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and textwriters, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further it seems well settled that if the statute provides compensation 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. * * *'"

At page 29 (Mo.) the Court says:

> "As the Legislature may fix such compensation to a public office as it sees fit, or none at all, we can see no constitutional objection to its attaching such conditions as it deems proper to the payment of the compensation, such conditions to be binding upon any one who thereafter enters upon such office and performs its duties. As stated above, the compensation has no relation to the amount or value of the service. There can be no application of the doctrine of quantum meruit. The officer takes the office cum onere. Having accepted it with the conditions imposed by the Legislature, upon whose will he must depend for any compensation at all, he cannot afterwards challenge the power of the Legislature to impose such conditions. * * *"

In the case of King v. Riverland Levee District, 218 Mo. App. 490, 279 S. W. 195, the St. Louis Court of Appeals stated, l. c. 196 (S.W.):

> "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. * * * * Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. 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."

It is your duty as county clerk to collect whatever fees the statute prescribes for the performance of duties by the county clerk, and all of such fees must be accounted for to the county. It is your duty as county clerk to perform all of the services enjoined upon you by the law regardless of whether the law authorizes compensation therefor.

In the case of Callaway County v. Henderson, 119 Mo. 32, the county clerk had received under an order of the county court $400 for keeping regular accounts between the treasurer and the county, the statute there authorizing the county court to allow the clerk for his services under that article, "such compensation as may be just and reasonable." The county clerk there contended that he was entitled to retain this $400 in addition to the $1800 provided by the statute as his compensation as clerk. The court ruled against his contention, holding that his official emoluments were limited by another provision of the statutes which provided that the amount of fees a clerk might retain for one year should be not more than $1500. The court there held that the county clerk, having collected more than the amount so allowed him for his salary and the amount allowed for deputy hire, must pay back to the county that part

of this $400 which, added to the other collections made by him, made an excess over the amount he and his deputies were entitled to receive.

We know, however, of no statute or law which requires you as county clerk to act as messenger for the various other county officials in calling them to the phone. If this service that you render is not an official act, then it would seem to not come under the rule above announced that authority for the payment thereof to you shall be given by statute.

The question then arises, does the county court have the authority in law to enter into such an agreement by which part of the county revenue will be paid to you as compensation for services that you render in favor of the county where the performance of those services does not interfere with you properly carrying on the official work that you have before you as county clerk?

Section 36 of Article VI of the Missouri Constitution provides:

> "In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. * * *"

In the case of State ex rel. Brewer, County Collector v. Federal Lead Co., 265 Fed. 305, the above section of the Constitution is construed and the court says, l. c. 310:

> "It is also obvious that the above constitutional provision, in conferring upon the county courts of the several counties power to transact 'all county business,' has the effect of making such county courts the general agents of the counties. If this view is correct, it is clear that the above statute and the constitutional provision above quoted

> have a very important bearing upon the issues presented in this case. For, absent some statutory inhibition, and I know of none, and subject to some prohibitions of the Constituion of Missouri not here relevant, the county courts are authorized to deal with all county business just as any other general agent of an individual principal might do."

The county is under the legal duty to furnish the usual and appropriate office equipment to the various county officials. This is held in the case of Ewing v. Vernon County, 216 Mo. 681, where the recorder of the county sued the county for recovery of money paid by him for janitor service for the recorder's office, and recovered the same.

In the more recent case of Buchanan v. County of Ralls, 283 Mo. 10, the Supreme Court held that the county was under liability to pay back to the county treasurer the money theretofore expended by her in paying rent for the treasurer's office during her incumbency, saying, l. c. 15:

> "It was the duty of the appellant to furnish respondent with suitable office space, heat, lights and janitor service."

If it was the duty of the county to furnish rent, light, heat and janitor service, it appears to us the county might be under the duty also of furnishing telephone service, as in the progress of time a telephone is regarded as an essential to a well equipped county office.

If the county business is being conducted in a proper and satisfactory way under the present arrangement, by which the county is at the expense of paying for one telephone and perhaps the price of one other telephone, being the amount they are paying to you in acting as messenger for the other officials, it would seem to be a reasonable arrangement in looking after the county affairs. Doubtless the other telephone expense that would be required, and for which the county would be obliged to pay, would amount to quite a good deal more than the amount they are paying to you, as stated in your letter, and under the authority of the Brewer case,

supra, it would seem that the county court is reasonably and properly attending to the duties of the county in carrying out the agreement with you as set forth in the question as stated by us hereabove.

CONCLUSION

It is our opinion that the county court has authority to enter into an agreement of record with the county clerk by which the county clerk performs for the county the services required in supplying, through his telephone, telephone service to the county officials in the courthouse, and to order warrants in favor of said county clerk for a reasonable compensation therefor, it appearing that the performance of those services by the county clerk does not interfere with the proper performance by the county clerk of his official duties, and this is true especially in view of the fact that by this arrangement with the county clerk the county saves the other additional expense it might be put to in having to pay the telephone bill for each of the other county officials in the courthouse.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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