

TOWNSHIPS: Township Clerks not entitled to receive a fee on account which may be filed in his office, which is to be laid before the township board for allowance.

April 29, 1937

5-10



Mr. Henry M. Phillips
Attorney At Law
Bloomfield, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this department, which reads as follows:

"I am writing this letter for an opinion from your office relative to proper fees for a Township Clerk to charge in a county under township organization such as Stoddard county. Mr. Clyde Henson, a newly elected clerk for Castor township, this county, has asked my advice in construing Section 12310 R. S. Mo. 1929 which sets out the fees to be charged by a clerk. Because of the wording I am doubtful about the meaning of said section. Mr. Henson is conscientious and wants to charge the proper fees and does not want to charge fees he is not entitled to. I am writing as an accommodation to Mr. Henson and not as his attorney.

* * * * *

"Should the township clerk charge ten cents each for claim or account filed by creditors of the township? In other words are these claims or

accounts which creditors must file in order to get warrants as provided by Section 12301 R. S. Mo. 1929 "instrument of writing" mentioned in Section 12310?"

We direct your attention to Section 12301, supra, which reads in part as follows:

"Any person having a claim or account against the township may file such claim or account in the office of the township clerk, to be kept by the said clerk, and laid before the township board at their next meeting: Provided, however, that any person having a claim against the township may present said claim to the township board himself, or by an agent, at any legally convened meeting of said board;"

You will notice from above quoted part of the Statute that it is discretionary with a person having a claim or account, as to whether such claim or account be filed in the office of the clerk, or be presented by the person or his agent before the township board. This Section contemplates that a person may pursue either course which, in his opinion, is best toward having his claim or account allowed.

Section 12310 provides in part:

"* * * the township clerk shall receive fees for the following, and not per diem. * * * For filing any instrument of writing, ten cents; * * * "

At first blush it would seem to appear that the above part of the statute would be broad enough to in-

clude any paper or memoranda with writing on it, but a perusal of a number of definitions cited in adjudicated cases reveals the contrary.

In the cases of State vs. Phillips 62 N. E. 12,14, and Patterson vs. Churchman 23 N. E. 1082, 1083, the Supreme Court of Indiana, has, in its opinions, undertook to collate the various definitions of an instrument and instruments of writing which we deem apropos. In the former case the Court construed a statute relating to recorders fees, for the indexing and recording of all other instruments there not specifically mentioned, for which a fee was charged, and in discussing the word instrument said:

"The word 'instrument', in a legal sense, is defined to be 'a writing, as the means of giving formal expression to some act; a writing expressive of some act, contract, process, or proceeding, as a deed, contract, writ, etc'. Webster's Int. Dict. 'A writing giving as the means of creating, a securing, modifying, or terminating a right, or affording evidence; as a writing containing the terms of contract, a deed of conveyance, a grant, a patent, an indenture, etc.' Cent. Dict. 'A formal legal writing, e. g. a record, charter, deed, or written agreement.' Rap. & L. Law Dict. 'Anything reduced to writing; a written instrument or instrument of writing; more particularly, a document of formal or solemn character.' And. Law Dict. 'The term 'instrument', in the broadest sense, comprises formal or legal documents in writing, including con-

tracts, deeds, wills, bonds, leases, mortgages, etc.' 16 Am. & Eng. Enc. Law (2d Ed.) p. 824. Abbott, in his Law Dictionary, defines the term 'instrument' as 'something reduced to writing as a means of evidence.' The word 'instrument' is frequently employed in our registry laws, and usually refers to some written document that is entitled to be recorded in a public record."

In the latter case above cited, the court had before it for consideration a statute which provided in substance that it was not necessary to copy a written instrument into a bill of exceptions. The question arose as to whether the stenographic report of the testimony was a written instrument within the meaning of this statute.

The Court in discussing definitions of an instrument, on page 1083 and 1084 said:

"* * * It is not every sheet of paper which has writing upon it that is a 'written instrument'; * * * We quote from Anderson's Dictionary of the Law: 'Instrument. * * * (3) Anything reduced to writing; a "written instrument," or "instrument of writing", more particularly, a document of a formal or solemn character. * * * "Instruments in writing," associated in a statute with "bonds", "laws", "deeds", and "records", has a restrictive connotation. * * * In Bouvier's Law Dictionary the word 'instrument' is defined as follows: 'The writing which

Mr. Henry M. Phillips

-5-

April 29, 1937

contains some agreement, and is so called because it has been prepared as a memorial of what has taken place, or been agreed upon. It includes bills, bonds, conveyances, leases, mortgages, promissory notes, and wills, but scarcely accounts, ordinary letters, or memoranda."

CONCLUSION

In view of the above, it is the opinion of this department that the claim or account mentioned in Section 12301, supra, that may be filed in the office of a Township Clerk, is not an instrument of writing, within the meaning of Section 12310, supra, for which the Township Clerk may receive a fee.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:JMW