

CIRCUIT CLERKS: Must hold money paid to them not satisfied of awards for damages in condemnation cases subject to the orders of the circuit court.

August 16, 1938



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your inquiry of recent date which reads as follows:

"In some of our audits we find in the Circuit Clerk's office an unclaimed and therefore undistributed balance from condemnation awards paid by the Highway Department.

We would like for you to advise us concerning the recommendation to be made for the disposition of these unclaimed amounts."

A survey of the method by which the money in question gets into the hands of circuit clerks will help in determining your inquiry.

Section 21, Article II, Constitution of Missouri, reads in part as follows:

"That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested."

Section 1342, R.S. Missouri, 1929, after outlining the method of appointing commissioners to assess damages and providing for the filing with the circuit clerk of their report showing damages assessed, provides: "and thereupon such company shall pay to the said clerk the amount thus assessed, for the party in whose favor such damages have been assessed;".

The State Highway Commission is given power by Section 8111, R.S. Missouri, 1929, to condemn land for certain highway purposes in accordance with the provisions of Article 2, Chapter 7, R.S. Missouri, 1929, of which Section 1342, supra, is a part.

In the early case of State v. Lubke, 15 Mo. App. 152, the court in discussing sections of the Constitution and statutes corresponding to those quoted, supra, said: (l.c. 161).

"The payment here provided is an unconditional payment to the clerk for the land-owner, and satisfies the requirements of the constitution."

And again in said opinion at l.c. 162, it is said:

"If the deposit satisfies the requirements of the constitution, the making of it exonerates the railway company; for they have done all that the law requires them to do as a condition precedent to the taking. Thenceforth the money lies in court, not at their risk, but at the risk of the land-owner. The law affords no provision for investing it so that it will yield him any profit."

From all of the above, it will be seen that when the award of damages in a condemnation case is deposited by the condemnor with the circuit clerk, such money is deposited with the court for the land owner, and from the time of such deposit by the condemnor the money is the property of the land owner. The clerk as an officer of the court holds the money subject to the order of the court, directing payment to the person or persons entitled

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thereto. The person claiming such money or any part thereof should make application to the court by motion or other appropriate proceeding to have same paid to him.

In 20 C.J., page 1074, in a discussion of the right to compensation awards, it is said:

"When deposited, it belongs immediately to the owner and should be paid to him upon his application for an order to that effect, although the deposit is accompanied by a protest."

Your query is, what shall the circuit clerk do with the money paid for damages if no one applies to the court for it and no order is made by the court for him to pay it to anyone? We have searched diligently for an answer to this question. There is no express provision in the statutes as to what the clerk shall do under such circumstances. By Section 11676, R.S. Missouri, 1929, the clerk is required to "keep a perfect account of all moneys coming into his hands on account of costs or otherwise, and punctually pay over the same". Money paid to the clerk in satisfaction of an award for damages is money paid into his hands by virtue of his office. (State ex rel. v. Scott, 216 Mo. App. 114). Various statutes expressly require the circuit clerk to pay over other moneys collected or received by him at certain times and to certain persons. Section 11814, page 447, Laws of 1937, requires him to pay into the county treasury monthly all fees collected by virtue of his office. Section 668, R.S. Missouri, 1929, requires him to remit to the Secretary of State the amount received from the sale of session acts. Section 11827, R.S. Missouri, 1929, requires the clerk to turn over to his successor all books and fees charged therein and not paid out.

However, we find no statute expressly directing the circuit clerk to turn over to his successor the money paid to him in satisfaction of an award for damages in a condemnation case. Likewise, there is no statute directing such clerk to turn over to his successor money in his hands by reason of tenders or interpleaders made in litigation. We think the reason for this is that money paid to the clerk in satisfaction of an award for damages and by way of tenders and interpleaders in litigation is money paid into the court and is subject to the orders of the court as to its disposition, whereas the money paid to the clerk by way of fees, etc., is money paid to the clerk and governed by statute

as to its distribution. In the cases of money paid into the court, the clerk must handle it and pay it out in accordance with the orders of the court. When the court orders the money paid out, the clerk must pay it out, but until such time as the court makes an order touching the distribution of such money, the clerk has no duty to perform other than to hold the money.

Since the money representing damages in condemnation cases is money in the hands of the court and is subject to the orders of the court, and since the court is a continuous institution regardless of who the clerk happens to be, such money should remain in the registry of the court. Therefore, to accomplish this situation, each clerk would have to turn over to his successor all such money in his custody at the end of his term. Such successor would be subject to the orders of the court as to the disposition of such money. Therefore, answering your question directly and legally, we would say that the circuit clerk can only hold the money in question subject to the orders of the court, each clerk turning over to his successor any such money remaining undisposed of. However, as a practical proposition, we would suggest that the clerk should notify the prosecuting attorney of the county as to any such money which has been uncalled for for any considerable time so that such officer can ascertain whether such money could, by proper proceeding, be escheated to the state. For instance, if it be found that the owner had died, the public administrator could be directed to open the administration upon his estate. Upon final settlement of said estate it may be found that the conditions exist as set out in Section 620, R.S. Missouri, 1929, which would make said money subject to being escheated to the state.

CONCLUSION

It is, therefore, the opinion of this office that circuit clerks should hold money paid to them in satisfaction of awards for damages in condemnation cases subject to the orders of the circuit court, and that such clerk should turn over to his successor any such money left in his hands undisposed of at the end of his term.

Respectfully submitted,

APPROVED By:

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