

FEEES: RECORDER AND CIRCUIT  
CLERK

Recorder and Circuit Clerk  
shall collect and account  
for fees for taking acknowl-  
ments and affidavits.

December 31, 1937

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Mr. Carl E. Williamson,  
Prosecuting Attorney,  
Ripley County,  
Doniphan, Mo.

Dear Sir:

This office acknowledges your request for an official  
opinion dated December 27, 1937, which is as follows:

"Will you please advise this office  
if it is required of the Recorder  
of Deeds to turn into the County  
Treasurer all fees collected for  
acknowledgements, and if Circuit  
Clerks are required to turn in  
their fees for the same services,  
such services being independent  
from their duties as such officers  
such as acknowledgements for  
applications for marriage licenses,  
acknowledgements of deeds, and  
affidavits."

This request particularly refers to the fees collected  
by the recorder for taking acknowledgments and by the Circuit  
Clerk for taking acknowledgments and administering oaths and  
whether or not the officers are required to account to the  
proper officials for the collections they make for such  
services. Section 11804 R.S. Mo. 1929 provides as follows:

"Recorders shall be allowed fees for  
their services as follows:  
\* \* \* \* \*  
For every certificate and seal-- 50¢  
\* \* \* \* \*"

Section 11562 R.S. Mo. 1929 is as follows:

"Hereafter whenever, under any law  
of this state relating to the duties  
of the recorder of deeds in any  
county of this state, it becomes  
necessary for any person to be sworn  
to any statement, affidavit or other  
papers of any kind, the recorder of  
deeds shall be authorized to admin-  
ister an oath to any person in matters

relating to the duties of his office, with like effect as clerks of courts of record: Provided, he use his seal of office to the jurat, as clerks of courts of record do. He shall receive the same compensation allowed by law for like service as clerks of courts are now allowed."

From the two foregoing sections of the statute, the recorder gets his authority to make charges for services for taking acknowledgments. Section 11568 R.S. Mo. 1929 requires the recorder to keep a full, true and faithful account of all fees of every kind received and make a report every year to the county court. If he receives an amount in an excess of four thousand dollars (\$4,000.00) for such fees, in any one year of his official term after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, then such excess shall be paid into the county treasury. While we do not find where the courts have passed upon this question as it applies to the recorders, but in view of the fact that the duties of the recorder in reporting fees and in charging fees are similar to those of the county clerk, we think the same rule which applies to the county clerks would apply to the recorder. In the case of State to the use of Jackson County v. Hickman, 84 Mo. 74, the court held that:

"Fees charged by the clerk of a county court for taking acknowledgments of deeds, granting certificates of pension papers, and certificates of authority of other officers to act, affidavits, etc., constitute a part of the fees of his office, and as such are to be accounted for by him in settling with the county court."

#### CONCLUSION

It is therefore the opinion of this office that in accordance with the provisions of the foregoing sections of the statute and following the ruling of the court in Jackson County v. Hickman supra, that it is the duty of the recorder to report and account to the county court for any and all fees which he collects for taking the acknowledgments which he is authorized by virtue of the provisions

of sections 11804 and 11562 R.S. Mo. 1929.

As to the duties of the Circuit Clerks to report these fees for taking acknowledgments for application for marriage licenses, acknowledgments of deeds and affidavits, etc., we find that by virtue of the provision of Section 11785 R.S. Mo. 1929:

"The Circuit Clerks shall receive in all civil proceedings the following fees for their services \* \* \* \* \*

For acknowledgment of a deed and other cases -----	50¢
For certificate and seal -----	50¢
For oath and certificate to affidavit -----	25¢

\* \* \* \* \*"

Section 11814 Session Acts of Missouri 1937, page 447 provides:

"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 11785, 11787 and 11788, or any other statute, \* \* \* \* \*

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, \* \* \* \* \*"

As the duties of the Circuit Clerk with the respect to collecting fees and accounting for fees are similar to those of the county clerks, we will treat them as within the same class. While we find no cases reported pertaining to the Circuit Clerk and his duties in respect to collecting and reporting these fees, however, we do find that in the case of State to the use of Jackson County v. Hickman, 84 Mo. 74, the court held that:

"Fees charged by the clerk of a county court for taking acknowledgments of deeds, granting certificates of pension papers, and certificates of authority

of other officers to act, affidavits, etc., constitute a part of the fees of his office and as such are to be accounted for by him in settling with the county court."

CONCLUSION

In accordance with the provisions of the foregoing statutes and following the ruling of the court in the case of Jackson County v. Hickman supra, this office is of the opinion that the fees charged by the Circuit Clerk for taking any acknowledgments, affidavits, etc., constitute part of the fees of his office and as such are to be accounted for by him in settling with the county court.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J.E. TAYLOR  
(Acting) Attorney General

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