

COUNTY CLERKS:
FEES IN REGARD TO
DRAINAGE DISTRICTS:

Additional fees provided for county clerks under Section 246.030, providing for fees paid to the county clerk in connection with drainage districts are to be construed to include extension.

March 31, 1959



Honorable Leon McAnally
Prosecuting Attorney
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Kennett, Missouri

Dear Sir:

This is in response to your request of January 12, 1959, regarding an opinion as to fees for county clerks under Section 246.030, which request reads as follows:

"The opinion of your office is desired in the matter discussed herein below.

"Levee District No. 7 in Dunklin County is a levee district organized by the County Court. Each year the county clerk makes up the tax books of Levee District No. 7 by entering in the tax books the assessment levy of Levee District No. 7.

"The question has now arisen as to whether the county clerk is authorized to charge the levee district the sum of eight cents per hundred words and numbers for making the entries of the levee assessment on the tax books.

"It is agreed that if the county clerk can make such charge it is by virtue of Section 246.030 V.A.M.S. The question then is whether or not this section authorizes said charge under this set of facts."

An examination of the Missouri Constitution of 1945 indicates that there is no Missouri constitutional issue involved in this matter, but, rather, it is a matter of statutory construction.

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The full text of Section 246.030 reads as follows:

"The county and circuit clerks, except as limited in section 246.020 and otherwise specified in statutes governing the organization and administration of drainage and levee districts, shall receive (in addition to the fees and deputy hire allowed by law) for filing each paper relating to a drainage or levee district, five cents; for issuing each subpoena, summons or notice, and for approving and filing each bond, twenty-five cents; for recording or copying each one hundred words and numbers, eight cents, any number consisting of more than three figures to be considered as two numbers. The fees of the sheriffs and witnesses shall be the same as allowed in section 246.020."

Section 246.030 has been underscored by this writer in two portions; the first being the limitation which this statute itself restricts the additional fees granted to county and circuit clerks under this section, and the second underscored portion being in reference to the only fee under this provision which might apply to the entry of the levee assessment.

It is clear from an examination of the second portion of Section 246.030, underscored, that it is the only possible fee under that statute which might be charged for making the entry of the levee assessment on the tax books. Therefore, an examination of the first portion, underscored above, must be made to ascertain whether or not this can be construed as an additional fee pertaining to the entry of the levee tax by the county clerk.

Two possible limitations are contained in the first portion underscored in Section 246.030. First, such possible limitations as Section 246.020 may make, and, secondly, possible limitations in other statutes governing the organization and administration of the levee districts.

You will note that Section 246.020 purports to grant additional fees to county and township officers for services rendered to drainage districts. However, it limits additional

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fees to a "reasonable compensation to be fixed by the court." It does not specifically limit the sections following (Section 246.030, pertaining to county clerks; Section 246.040, pertaining to county collectors; Section 246.050, relating to county treasurers' fees). Consequently, since the three sections following Section 246.020 are specific in their nature, i.e., pertain to specific county officers, these statutes would govern over the general statute providing for additional fees for county officers as to those particular officers. This being the situation, it is readily seen that Section 246.030, the statute governing fees for county clerks, is in no way limited by the wording of Section 246.020 except as to possible services which could be performed by the county or circuit clerk which would differ or fail to fit into the categories enumerated in Section 246.030. Since we have construed the statutes relating to additional fees for services performed for drainage districts which might, in themselves, limit the additional fees granted, we next pass to the question of whether the statutes governing the organization and administration of levee districts in any way limit this provision.

Section 245.445 provides that, after assessment by the board of directors of the levee district, the assessment books are to be delivered to the clerk, whose duties are:

" * * * the secretary of the board, under his official seal, shall cause a certified copy of said order to be transmitted to the clerk of the county court in which said levee district shall be situated, and in case such levee district shall be situated in two or more counties, then to the clerk of the county court of each county in which any portion of said district may be situated; and the said tax shall be extended on the tax books of the county on the real estate to be benefited, situated in said levee district, in the same manner that other taxes are now extended, in a column under the head of 'Levee fund tax,' * * *."

This, of course, is the act of which you are inquiring and request that we decide whether the same is subject to the fee provided under Section 246.030 for "recording or copying."

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The clerk's duties as to extension are governed by Section 137.290. It is a distinct and separate act of the clerk, to be performed by him, not the "copying" of someone else's figures, but the computation of the taxes from the figures given to him by the assessor and placed by him on the assessor's books. To "copy" is defined in 13 C.J., 935, as :

"To make a copy or copies of; to write, print, engrave, or paint after an original; to duplicate; to reproduce; to transcribe; as to copy a manuscript, inscription, design, painting, etc.; to make a copy of [a picture or other work of art]; to reproduce or represent [an object] in a picture or other work of art."

In contrast, the word "record" is defined in 76 C.J.S., at 107, as:

"As a verb the word 'record' is defined as meaning to commit to writing, to printing, to inscription, or the like; to enter in a book for the purpose of preserving authentic and correct evidence of the thing recorded; * * *."

It appears to us that the clerk, in entering the amount of levee tax upon the tax books, "commits to writing" the amount of such tax and enters it there "for the purpose of preserving authentic and correct evidence" of the amount of such tax.

CONCLUSION

Therefore, it is the opinion of this office that the act of making the entries of the levee taxes on the tax books is the act of "recording" within the meaning of Section 246.030, RSMo 1949. Consequently, county clerks are to receive the fee prescribed by that section in recompense for the duties imposed upon them in preparing levee district tax books.

Very truly yours,

JOHN M. DALTON
Attorney General

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