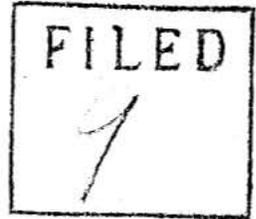


COUNTY CLERK: County clerk must charge statutory fee for  
FEES: oath and certificate to affidavit of county  
COUNTY COLLECTOR: collector to the return of drainage tax books  
DRAINAGE DISTRICT: of circuit court drainage district.

*Copy to  
J. Smith*

May 14, 1947



*5/20*

Honorable Ralph R. Bloodworth  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"My office desires an opinion on the following matter concerning the Inter-River Drainage District of Missouri, a drainage district that has been incorporated and organized a considerable number of years in Butler County, and is a political subdivision.

"The Collector of Internal Revenue for Butler County has always in the past made monthly statements of drainage tax collected in the proceeding month and likewise a monthly turn-over. His statements have always been verified by his affidavit made before the county clerk. As far as I can find, the County Clerk has never heretofore made the collector a charge for taking the affidavit or affixing his seal, and the Inter-River Drainage District of Missouri has never heretofore paid any charge for this.

"Just recently a representative of the State auditor's office advised our County Clerk that he must make a fifty cent charge each time he affixes his seal for anything other than County business. The County

Clerk of Butler County takes the position that this instruction would require him to make a charge of fifty cents for each affidavit made by the collector on each and every statement prepared by the collector and submitted to the district. The County Clerk does not charge the collector for affixing his seal to the statement of State and County taxes because the collector is engaged in county business.

"The collector is required by law, Sec. 12342, revised statutes of Missouri, 1939, to collect the drainage tax in just the same manner as he is required to collect and remit state and county taxes. His compensation is fixed by statute. The county Clerk of Butler County has requested an opinion from my office regarding this matter, and I in turn am requesting an opinion from your office. In short, the question is since the Inter-River Drainage is a public corporation, is the County Clerk required to charge the collector for his affidavit and seal on the settlements made in connection with the drainage tax. I will certainly appreciate an opinion from your office regarding this matter."

We are unable to find any provision in the statutes requiring the county collector to verify by affidavit monthly statements of drainage tax collections from the land in a drainage district organized under the provisions of Article 1, Chapter 79, Mo. R. S. A.

Section 11098 of House Committee Substitute for House Bill No. 765 of the 63rd General Assembly provides that the collector, on or before the fifth day of each month, shall file with the county clerk a statement, verified by affidavit, of all state, county, school, road and municipal taxes, and pay the same, less commissions, to the county treasuries and to the Director of Revenue, but that part of Section 12342, R. S. Mo. 1939, relative to the duties of the county collector with regard to drainage taxes reads as follows:

\* \* \* \* The said collector shall make due return of all 'drainage tax books' each year to the secretary of the board of supervisors of the aforesaid drainage district, and shall

pay over and account for all moneys collected thereon each year to the treasurer of said district at the same time when he pays over state and county taxes. Said collector shall in said 'drainage tax book,' verify by affidavit his said return. \* \* \*

It will be seen from this quoted portion of Section 12342 that the collector must turn over to the treasurer of the drainage district the drainage taxes on or before the fifth of each month, but the only requirement made as to the collector with regard to making an affidavit is that he shall make due return of the "drainage tax book" each year to the secretary of the drainage district, and that the collector shall in the "drainage tax book" verify by affidavit such return. The only affidavit that is required by the statutes to be made by the collector is this affidavit of his return of the "drainage tax book" to the secretary of the district.

Section 12342 provides that the money collected as drainage district taxes shall be paid by the collector to the secretary of the drainage district, and the return of the "drainage tax book" shall be made to the secretary of the drainage district. Neither the county court nor the county clerk has any duties at all in connection with the collection or spending of the tax moneys of a drainage district organized under the provisions of Article 1, Chapter 79, Mo. R. S. A.

There is in the statutes no requirement that the oath to the affidavit required of the collector be administered by the county clerk. The oath to the affidavit may be administered by anyone authorized by the laws of this state to administer oaths and affirmations.

Section 13403, R. S. No. 1939, provides, in part, as follows:

"The clerks of the county courts, respectively, shall be allowed fees for their services as follows:

\* \* \* \* \*

"For oath and certificate to an affidavit..... .25

\* \* \* \* \*

Honorable Ralph R. Bloodworth      -4-

Section 7 of House Bill No. 867 of the 63rd General Assembly provides, in part, as follows:

"It shall be the duty of the clerk of the county court in counties of the third class to charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county including his per diem as secretary of the board of equalization. \* \* \*"

Since the county clerk is obliged to charge every fee accruing to his office by law, except those chargeable to the county, and since the fee for the oath and certificate to the return of the county collector of the "drainage tax book" is not chargeable to the county, it is the duty of the county clerk, if he does administer the oath in this case, to charge the fee required by law.

CONCLUSION

It is the opinion of this department that the county clerk must charge the statutory fee for the oath and certificate to an affidavit of the return of the county collector of the "drainage tax book," which return is made to the secretary of a drainage district organized under Article 1, Chapter 79, Mo. R. S. A.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CBB:HR