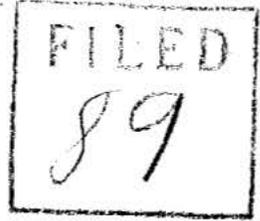


CIRCUIT CLERK AND RECORDER  
OF DEEDS:  
DRAINAGE DISTRICT:  
FEES:

Circuit Clerk and recorder of deeds,  
under House Bill No. 775, passed by  
the 63rd General Assembly, not entitled  
to retain fees or compensation for  
services rendered under Article 1, Chapter  
79, R.S. Mo. 1939.

January 30, 1947



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Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an  
official opinion, which reads:

"It has been ruled that the Circuit Clerk,  
in Counties like Carroll may retain the  
costs in drainage cases. I would like to  
have your opinion on whether or not the  
Clerk may retain the costs in a suit for  
default drainage taxes, instituted in the  
Circuit Court and prosecuted to judgment."

By reference to "costs" we are assuming for the purpose  
of this opinion that you mean costs or fees allowed the cir-  
cuit clerk for services rendered the drainage district under  
and by virtue of Article 1, Chapter 79, R.S. Mo. 1939.

One of the cardinal rules of statutory construction is  
to ascertain and give effect to the intention and purpose of  
the Legislature as expressed in the act. In *Thompson v. City  
of Lamar*, 17 S.W. (2d) 960, 1.c. 967, the court, in enunciating  
the foregoing rule, said:

"\* \* \* While it is our duty, in construing  
a statute, to endeavor to ascertain, and to  
carry out, if possible, the true intent and  
purpose of the Legislature in enacting such  
statute, yet we have no right to alter,  
amend, change, or add to, the statute, by  
supplying omitted words or phrases, under  
the guise of construction, especially where  
the statute is not ambiguous or uncertain  
in the words, language, and form in which  
it was enacted by the Legislature. 36 Cyc.  
1103. \* \* \* \* \*"

Also, see State v. Tombs, 25 S.W. (2d) 101, 1.c. 109.

The circuit clerks in such counties as yours have been upon a salary basis for a long time. Section 13408, R.S. Mo. 1939, was a general and controlling salary statute for said circuit clerks prior to the enactment of House Bill No. 775, passed by the 63rd General Assembly. Apparently the reason for passing such legislation was to break down the various counties into classes so as to conform to the provision in the Constitution of 1945 relative to classifications of counties. (See Section 8, Article VI, Constitution of 1945.) We make this assertion because under said House Bill No. 775 the annual salary provided therein is practically in the same figures and words as will be found in Section 13408, R.S. Mo. 1939.

House Bill No. 775, passed by the 63rd General Assembly, deals exclusively with the annual salary, compensation, and certain specified fees for the circuit clerk and recorder of deeds in third-class counties, wherein the offices of circuit clerk and recorder of deeds are combined. We understand this is the case in Carroll County, Missouri. Under said House Bill No. 775 the Circuit Clerk and Recorder of Deeds in Carroll County is entitled to receive \$2300.00 annually and, in addition thereto, retain all fees earned by him in change of venues from other counties. Section 1 of said bill reads:

"The circuit clerk and recorder in counties of the third class, wherein the two offices shall have been combined, shall receive annually for his services the following: In counties having a population of less than 7,500 the sum of \$1400; in counties having a population of 7,500 and less than 10,000 the sum of \$1800; in counties having a population of 10,000 and less than 15,000 the sum of \$1900; in counties having a population of 15,000 and less than 17,500 the sum of \$2100; in counties having a population of 17,500 and less than 25,000 the sum of \$2300; and in counties having a population of 25,000 or more the sum of \$2500; provided that the circuit clerk and recorder shall be allowed to retain, in addition to the sums above allowed, all fees earned by him in cases of change of venue from other counties; provided, further, that persons now holding the office of circuit clerk and recorder shall not have their compensation increased by reason of this act for his present term."

Said officer is also entitled, under the said bill, to receive annually, in addition to the aforesaid salary, all fees earned in change of venues, and for services rendered as clerk of the juvenile division of the circuit court \$500.00. Section 2 of said bill reads:

"In addition to the compensation provided in Section 1 hereof, the circuit clerk and recorder of counties of the third class, wherein the two offices shall have been combined, shall receive annually for his services as clerk of the juvenile division of the circuit court the following: In counties with a population of less than 7,500 the sum of \$100; in counties having a population of 7,500 and less than 10,000 the sum of \$200; in counties having a population of 10,000 and less than 15,000 the sum of \$300; in counties having a population of 15,000 and less than 17,500 the sum of \$400; and in counties having a population of 17,500 or more the sum of \$500."

Under Section 3 of said act the circuit clerk and recorder of deeds is required to charge and collect every fee accruing to his office as recorder of deeds, to which he may be allowed under the law, and to make a monthly report of all fees and pay same over monthly to the county treasurer, except those fees earned by him in change of venues from other counties as provided in Section 1 of the act. Section 3, House Bill No. 775, supra, reads:

"It shall be the duty of the circuit clerk and recorder of counties of the third class, wherein the offices shall have been combined, to charge and collect for the county in all cases every fee accruing to his office as recorder of the county to which he may be entitled under the law, and shall at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of the circuit clerk and recorder, upon the filing of said report, to forthwith pay over to the county treasurer, all moneys, except that collected for change of venue fees as provided in Section 1 of

this act, that shall have been collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the county clerk, and every such circuit clerk and recorder shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the county treasury as herein provided."

Section 4 of said act requires the clerk to collect, report and remit fees accruing to his office as circuit clerk of the county in the same manner as provided in Section 3 of said act.

There are numerous statutory provisions requiring the clerk of the circuit court to perform certain specified duties under Article 1, Chapter 79, R.S. Mo. 1939, such as Sections 12324-25-34-35-38 and 46. However, we are unable to find any specific fee allowed the circuit clerk under said article as is provided for some other officers, but we do find Section 12363, R.S. Mo. 1939, which requires the board of supervisors of said drainage district, except where otherwise provided, to pay the fee, per diem and necessary expenses, of all court and county officers who, by virtue of said article, render service to the drainage district, and further provides that the ordinary fee statute does not apply to services rendered under said article by any county officer, but that said county officers shall receive reasonable compensation for services rendered the district, to be fixed by the court wherein the proceedings may be pending. Said Section 12363 reads:

"The board of supervisors, except where otherwise provided shall, by resolution, at time of hiring or appointing, provide for the compensation for work done and necessary expense incurred by any officer, engineer, attorney or other employee and shall also pay the fees, per diem and necessary expenses of all court and county officers who may by virtue of this article render service to said district. It is understood that the ordinary fee statute does not apply to services rendered under

this article by any county officer, but each such officer shall receive only a reasonable compensation for services actually rendered, the same to be fixed by the court in which the proceeding is pending, except where otherwise provided in this article; that said corporation or petitioners for corporations may prepare, write or print all copies of petitions, writs, orders and decrees or other papers, and furnish same to the clerk or other officer for his use, and in such event said officer shall be entitled to receive as compensation for issuing the said writs and copies of petitions, decrees, orders or other papers, only the reasonable value of the services actually rendered."

It is a well recognized principle of statutory construction that statutes relating to the same subject matter are to be considered together and, if possible, harmonized and effect given to all provisions. See *Whalen v. Buchanan County*, 111 S.W. (2d) 177, 342 Mo. 33. Also, see *State ex rel. Cairo Bridge Commission v. Mitchell*, 181 S.W. (2d) 496, 352 Mo. 1136. Another recognized rule is that statutes pertaining to salary and fees of public officers shall be strictly construed against said officers, and that a public officer is only entitled to receive compensation when he can point to the statute authorizing same. See *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 1.c. 860.

Under Sections 3 and 4 of said House Bill No. 775, the circuit clerk and recorder of deeds must report and remit monthly fees allowed him under the law, except those earned in change of venues. Said House Bill does not specifically repeal Section 12363, R.S. Mo. 1939. Therefore, the reasonable conclusion is that said officer is entitled to reasonable compensation, fixed by the court wherein such proceedings may be pending, under Article 1, Chapter 79, R.S. Mo. 1939, however, such fees must be reported and remittance made to the county treasury. Keeping in mind the foregoing rules of construction, we are of the opinion that, under House Bill No. 775, passed by the 63rd General Assembly, the circuit clerk and recorder of deeds in your county is entitled to receive an annual salary amounting to \$2300.00 and, in addition thereto, \$500.00 annually allowed for services rendered as clerk of the juvenile division of the circuit court, and said officer may also retain, in

Hon. D. D. Thomas, Jr.

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addition to the foregoing compensation, all fees earned by him in change of venues from other counties.

CONCLUSION

Therefore, it is the opinion of this department that the circuit clerk and recorder of deeds in third-class counties, wherein the two offices are combined, is entitled to receive the annual salary provided in House Bill No. 775, passed by the 63rd General Assembly, and, in addition thereto, the amount allowed in said bill for services rendered as clerk of the juvenile division of the circuit court, and, in addition to the foregoing compensation, said officer may retain fees earned by him in change of venues. However, all other fees or compensation allowed said officer shall be reported monthly and paid into the county treasurer, which will include all fees or compensation allowed by the court under Article 1, Chapter 79, R.S. Mo. 1939.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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