

COUNTY CLERKS )

) County Clerks in third class counties may retain fees  
) collected under Section 51.400, RSMo 1949, in addition  
) to their salaries and do not have to account for same,  
) but cannot retain fees collected under Section 51.410,  
) RSMo 1949, which fees are to be accounted for and paid  
) over forthwith to the County Treasury.

March 14, 1951

FILED

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Honorable Philip A. Grimes  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Mr. Grimes:

This is in reply to your letter requesting an opinion from this office on questions concerning salary and fees of the county clerk of your county, a third class county. Your restated questions are as follows:

Question Number One: May the county clerk of Boone County, a third class county, retain the fees and compensation provided for under Section 51.400, RSMo 1949, in addition to his salary as provided in Section 51.310, RSMo 1949?

Question Number Two: May the county clerk of Boone County retain the fees provided for under Section 51.410, RSMo 1949, in addition to his salary as provided in Section 51.310, RSMo 1949?

In answer to your question number one we are enclosing herewith copy of an opinion of this department dated November 23, 1949, to Honorable W. H. Holmes, State Auditor, Jefferson City, Missouri. This opinion apparently answers your question number one in the affirmative.

Your second question refers to Section 51.410, RSMo 1949, which section, except services and amount of fee for each service, is as follows:

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

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follows: \* \* \*" (Various services and fees are here omitted. For same see Section 51.410, RSMo 1949.)

In answer to your question number two we call your attention to Sections 50.370 and 50.390, RSMo 1949. Said Section 50.370, supra, is as follows:

"In all counties of classes three and four, every county officer who receives any fees or other remuneration for official services which is payable to the county, except recorders of deeds whose offices are separate from that of circuit clerks, shall, at the end of each month file a verified report with the county court of his county showing all fees charged and accruing to his office and the act or service for which each such fee was charged, together with the names of persons paying or liable for same. Upon the filing of such report, each said county officer shall forthwith pay over to the county treasurer all fees and other moneys collected by him which belong to the county and shall take two receipts therefor, one of which shall be filed with the county court and the other shall be kept on file in his office. Every such officer shall be liable personally and on his official bond for all fees collected by him and not accounted for and paid into the county treasury as herein provided."

(Emphasis ours.)

Said Section 50.390, supra, is as follows:

"All county officers and other persons chargeable with moneys belonging to any county shall render their accounts

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to and settle with the county court in the manner and at the time prescribed by law."

These sections specifically provide that in all counties of Classes three and four (Boone County is in Class three) every county officer who receives fees for official services which are payable to the county shall make a monthly report of such fees to the county court, and upon filing such report such officer shall forthwith pay over to the county treasury all moneys collected by him which belong to the county and such officer shall be liable personally and on his official bond for all fees collected by him and not accounted for and paid into the county treasury.

You will note that Sections 51.340 and 51.400, RSMo 1949, both of which sections apply to your county, each provide that in addition to salary certain remuneration or fees shall be allowed the clerk of the county court, or retained by him, as unaccountable fees, while said Section 51.410 has no such provision. Therefore, fees collected under this section (51.410) cannot be retained but must be accounted for to the county court and paid into the county treasury.

We are of the opinion that the last two quoted sections cover fees collected under the provisions of Section 51.410, RSMo 1949, and that the county clerk of your county has no authority of law to retain fees collected under this section, but under the provisions of the above-quoted sections he must account for such fees and pay the money collected under this statute to the county treasurer.

#### CONCLUSION

It is, therefore, the opinion of this department that fees collected by your county clerk under the provisions of said Section 51.400, RSMo 1949, shall be retained by the clerk, as unaccountable fees, in addition to his salary as provided by law.

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It is our further opinion that fees collected by your county clerk under the provisions of said Section 51.410, RSMo 1949, shall be reported to the county court and such fees so reported shall be forthwith paid over to the county treasury. Such officer failing to so report and to pay over such fees would be liable personally and on his official bond for fees collected under said Section 51.410, RSMo 1949.

Respectfully submitted,

GROVER C. HUSTON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

Enclosure

GCH/feh