

COUNTY OFFICERS: PAYMENT
OF FEES TO: WHEN

County clerk of third class county entitled to fees for tax extensions in 1947-48; may subsequently request payment of county's part; fees are fixed by legislature and are automatically in budget by operation of law. Fees may be paid in subsequent years from available funds of county though item not actually included in budget for year in which payment is to be made.

March 1, 1951

3-9-51



Honorable J. Hal Moore
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

"In re: Revised Statute No. 10400

"Does the above statute require a third-class county as is our county, to pay the Treasurer a certain amount or any amount for taking care of school money? Under the interpretation of this statute, is it possible for the County Court to allow no extra fees to the Treasurer without recourse on them or the County?"

"In re: County Clerk's salaries and fees.

"On January 3, 1950 your office released an opinion and I quote 'County Clerks of third and fourth class counties entitled to retain fees for extending the tax books for 1947 and '48' Query: Where a County Clerk has not retained any fees for these years, is the County Court obligated to pay him his fees out of the County and State fund?"

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Your first inquiry is whether or not Section 10400 R. S. Mo. 1939, requires a third class county, such as your own, to pay the county treasurer a certain amount for taking care of the school moneys, and whether or not the county court's refusal to allow the treasurer extra fees for the performance of his duties relating to the school moneys may be had without recourse on the court or the county.

We assume that the "extra fees" in the opinion request has reference to fees of the county treasurer for performance of his duties relating to the school moneys claimed in addition to the salary of the treasurer as provided by Section 1, page 1540, Laws of 1945.

Section 10400, Mo. R. S. 1939, referred to above, has been repealed and in its place Section 54.160, RSMo 1949, has been enacted, which reads as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes, belonging to the different districts, until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by law, except in counties having adopted the township organization law, in which counties the township trustee shall be the custodian of all school moneys belonging to the township, and be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; and on his election, before entering upon the duties of his office, he shall give a surety company bond, with sufficient security, in the probable amount of school moneys that shall come into his hands, payable to the state of Missouri, to be approved by the county court, and paid for by the county court out of the county common school funds, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various

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districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over the amount of the security available in the bond; provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

Under the provisions of this section it is the duty of the county treasurer in each county to be the custodian of all school moneys belonging to the districts of the county, and to disburse said moneys in the manner therein provided.

Neither this section of the statutes, nor any other provide, that for being the custodian, and for the disbursement of the school moneys of his county the treasurer shall be entitled to any fee for such services.

In the absence of specific statutory provisions allowing him a fee for the performance of duties imposed upon him by law, a public officer is not entitled to a fee. This principle of law has long been established as the general rule in Missouri, and has been so declared by a number of court decisions, and we desire to call attention here to a few of them, as follows:

In the case of State ex rel. Brown, 146 Mo. 401, the court held that a sheriff was not entitled to certain fees claimed, since they were not authorized by statute. At l. c. 406, the court said:

"It is well settled that no officer is entitled to fees of any kind unless provided by statute, and being solely of statutory rights, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the

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statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

Again, in the case of Nodaway County v. Kidder, 344 Mo. 795, at l. c. 801, the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. * * *"

In view of the holdings of the above cited cases, and in the absence of any provisions of Section 54.160, supra, or those of any other statutes, it is our thought that the county treasurer must perform his duties as custodian of the school moneys belonging to the districts of his county, and to disburse said moneys in the manner provided by said section, but that in so doing he is not entitled to any fees for his services in addition to the salary as treasurer to which he is entitled under the provisions of Section 1, page 1540, Laws of 1945, and that the county court lacks the power to allow said treasurer any amount as fees for the performance of those duties required of the treasurer under Section 54.160, supra.

Your next inquiries have to do with the county clerk's salary and fees, the first question being as follows: "Where a County Clerk has not retained any fees for these years, is the County Court obligated to pay him his fees out of the Court and State fund?"

This inquiry has been more clearly explained in your letter of January 29, 1951, to this department in which it is stated:

"The information which I want in regard to the County Clerk's salaries and fees pertains to the following situation: Our County Clerk did not retain any fees for 1947 and '48 but handed all money back to the County Treasurer and the question that arises in my mind is when he has failed to retain the fees that are allowed

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him, can he now, at this date, request the County Court to pay these fees? Second question: Does the County Court have to budget for these fees before the County Clerk can collect them if he is entitled to do so?"

The opinion of this department referred to in your first letter is dated December 15, 1950, and contained a reference to an opinion dated November 23, 1949, holding that clerks of third and fourth class counties were, under the provisions of House Bill No. 126 of the 65th General Assembly, entitled to a fee of three cents per name for extending the tax books, the particular reference being:

"Therefore, it would appear that the fee allowed to the county clerk for extending the taxes has been, and is now an unaccountable fee. * * * this fee allowed the county clerks has, at least since November 1945, been unaccountable, and therefore the provision of House Bill 126, did not increase the compensation during the present term of the clerks, which began January 1, 1947."

That part of House Bill 126, allowing fees to the county clerks for extension of the tax books is now Section 51.400 RSMo 1949, and reads as follows:

"The following fees and compensation shall be allowed to and retained by the clerk of the county court, as unaccountable fees, in addition to the salary and other fees now provided by law, for services rendered:

"(1) For extending the tax on the assessment book, three cents for each name, to be paid by the state and county in proportion to the number of tax columns used by each: * * *"

We interpret the statute as meaning that the respective obligations of the county and state to each pay their proportional part of the clerk's fees became fixed on the date the services were performed. This being a valid obligation at the time it was contracted, neither non-payment by the county or state, nor the mere lapse of time could render the obligation illegal, or affect the right of the clerk to demand payment of his fees in years subsequent to those in which the fees were earned, since payment appears to be the only method by which the obligation could legally be discharged.

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While the opinion request does not state, but in the absence of information to the contrary, it is assumed that the county clerk was paid the salary to which he was entitled under the statute for the year, 1947-48. Since he was also entitled to the fees provided by House Bill No. 126, supra, for those years in addition to his salary, he received less compensation than that to which he was legally entitled, and in so doing he was not precluded from subsequently claiming the legal compensation due him. We base our conclusion upon what appears to be the general rule in such matters, as stated in Corpus Juris Secundum, under the title of "Officers" Volume 67, page 358, as follows:

"It is generally held, at common law and in the absence of statute otherwise providing, that the acceptance of less compensation than that established by law for the office does not preclude the officer, on the ground of waiver, estoppel, or the like, from subsequently claiming the legal compensation. * * *"

Also the rule in Missouri appears to have been well stated in the case of Reed v. Jackson County, 346 Mo. 720, in which the court said at l. c. 726:

"In view of our statute and court decisions, especially the Rothrum case, it seems clear that to permit public officers, elected or appointed, to receive, by agreement or otherwise, a less compensation for their services than fixed by law, would be contrary to the public policy of the State. * * *"

In view of the foregoing, and in answer to your inquiry, it is our thought that the county clerk of your county may at this time file his account for that part of his fees earned in 1947-48, for which the county is liable, with the county court. That upon receipt of such account it shall be the duty of the court to allow or reject the claim, and if allowed, to order payment of whatever sum is found to be due, on the account from any available funds in the county treasury.

Your last inquiry is whether or not (in the event it is held that the county clerk is still entitled to his fees at this date) the county court will be required to include the amount of fees of the county clerk in the county budget, before the clerk can collect same.

Every proposed expenditure of the county must, under the provisions of Section 50.670 RSMo 1949, be included in the budget for the year in which the expenditure is to be made, the provisions

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of said section reads as follows:

"This law may be cited and quoted as 'The County Budget Law.' All counties of the third and fourth classes shall be governed by sections 50.670 to 50.740. Whenever the term 'revenue' is used in sections 50.530 to 50.740 it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by sections 50.530 to 50.740 regardless of the source from which derived. The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January first, and ending December thirty-first. The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year. The clerk of the county court of the several counties of this state shall be the budget officer of such county and as such shall prepare all data, estimates and other information needed or required by the county court for the purpose of carrying out the provisions of sections 50.530 to 50.740 but no failure on the part of the clerk of the county court shall in any way excuse the county court from the performance of any duty herein required to be performed by said court. The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

The proposed expenditures of the county are to be listed under six different classifications, under the provisions of Section 50.680 RSMo 1949, as follows:

"The court shall classify proposed expenditures in the following order:

"Class 1. The county court shall set aside and apportion a sufficient sum to care for insane

pauper patients in state hospitals. Class one shall be the first obligation against the county and shall have priority of payment over all other classes.

"Class 2. Next, the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this law. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class one. In estimating the amount required in class two the county court shall set aside and apportion in the budget a sum not less for even years than the sum actually expended in the last even numbered year and for odd years an amount not less than the amount that was actually expended during the last preceding odd numbered year.

"Class 3. The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under section 137.555, RSMo 1949. This shall constitute the third obligation of the county.

"Class 4. The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six.

"Class 5. The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes one, two, three, four to class five to be used as contingent and emergency expense. From this class the county court may pay

contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes.

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose; provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six; provided that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class six."

The fees of county officers, are one of the authorized proposed expenditures of the county, and are required to be listed under one of the six classifications in the budget for the year in which such proposed expenditures are to be made.

Although the County Budget Law requires the budgeting of such items of proposed expenditure it has been held by the Supreme Court of Missouri, that since the legislature has evidently provided for and fixed the salaries of county officers, that such salaries are really a part of the county budget whether or not they are actually included in the budget as prepared. This holding is set forth in the court's opinion in the case of Gill v. Buchanan County, 142 S. W. (2d) 665, and at l. c. 668, the court said:

"However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the county court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such

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amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. This court has held that the purpose of the County Budget Law was 'to compel * * * county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. 2d 340, 342.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all 'county officers' salaries fixed by the Legislature does not affect the county's obligation to pay them."

While the court in that part of the opinion quoted above specifically referred to the salaries of county officers, and whereas the matter under discussion herein involves fees and not salaries, it is still our thought that the ruling of the court in the above quoted opinion is also applicable to the fees of county officials since both salaries and fees of such county

officials are provided for in the statutes passed by the legislature, and also for the reason that any expenditure specifically provided for by the legislature should of course be included in the budget, but if not included in the budget should be considered as automatically included therein, and as taking precedence over other expenditures to which the county court has been given discretion by the legislature. It is our further thought that the ruling of the Gill case as set forth in the above quoted portion of the opinion, applies not only to salaries of county officers fixed by the legislature but that it also applies to fees of county officers as well as to any and all other expenditures specifically provided for by the legislature and is, as we believe, fully established by the decision in the case of State v. Wade, 231 S. W. (2d) 179, in which the court cited the case of Gill v. Buchanan County with approval in the following language:

"Respondents' failure to make provision for this in the county budget is not decisive. In Gill v. Buchanan County, 346 Mo. 599, 142 S. W. 2d 665, 668, we held that failure to make provision in the budget for the amounts necessary to pay in full, all county officers' salaries fixed by the Legislature did not affect the county's obligation to pay them. We said: 'The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. * * * Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. * * * Mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements.' * * *"

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We are therefore of the opinion that in view of our holding discussed above that the law has provided for the payment of fees to the county clerk as previously mentioned, and even though such fees have not been included in the county budget, nevertheless, they may be paid from available funds because they are to be considered as being in the county budget by operation of law.

CONCLUSION

It is the opinion of this department that under the provisions of Section 54.160, RSMo 1949, the treasurer of a third class county is the custodian of all moneys for school purposes, belonging to the different districts of his county until paid out in the manner provided by said section. There being no provisions in this or any other section of the statutes authorizing payment of compensation; the treasurer is required to perform such duties gratuitously, and cannot be paid compensation of any kind for his services.

It is the further opinion of this department that a clerk of a third class county who was entitled to retain, but failed to retain fees for extension of taxes on the assessors books for 1947 and 1948, which fees were allowed in addition to his salary, under the provisions of what is now Section 51.400 RSMo 1949, and who received his statutory salary for these years, received less compensation for his services in those years than that to which he was legally entitled. By accepting the lesser compensation he is not precluded from requesting payment of the proportional part of the fees earned in 1947-1948, for which the county is obligated, in subsequent years.

Although the County Budget Law requires the budgeting of every proposed item of expenditure, the salaries of county officers are fixed by the legislature and are really a part of the county budget whether or not they have actually been included therein, under the rule announced in the case of Gill v. Buchanan County, supra. That while the court in its opinion specifically referred to salaries, the fees of county officers are fixed by the legislature and the ruling in that case is also applicable to the fees of such officers as well as all other expenditures provided for by the legislature, and that such fees are automatically included in the budget by operation of law regardless of whether or not they have actually been included in the budget as written. That if upon presentation of a claim for the fees, and that if

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the county court finds the claim to be in the correct amount and the services rendered as claimed, it shall be the duty of the court to order said amount paid from available funds of the county.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

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