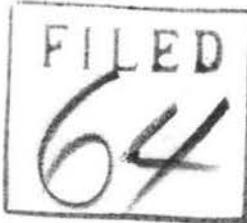


FEES: County Clerk not entitled to retain in addition
BOUNTIES: to his compensation the twenty-five cent fee
COUNTY CLERK: for the taking of affidavits relating to bounties
COMPENSATION: on wild animals.



September 3, 1953

Honorable Richard D. Moss
Assistant Prosecuting Attorney
of Jasper County
Carthage, Missouri

Dear Mr. Moss:

This is in reply to your letter of recent date requesting the opinion of this department concerning the following matter:

"Section 279.050 R.S. Mo., 1949, states,
'The Clerk of the County shall be allowed
twenty-five cents for each affidavit taken
under Section 279.020 to be paid out of the
County Treasury.'

"This refers to the bounty paid on wildcats,
wolves and coyotes. Is the County Clerk of
Jasper County entitled to this bounty, in
addition to his salary?"

Section 279.050, RSMo 1949, reads as follows:

"The clerk of the county shall be allowed
twenty-five cents for each affidavit taken
under section 279.020, to be paid out of the
county treasury."

Section 279.050, RSMo 1949, is a general section applying to all classes of counties in Missouri, and according to its language it would at first seem that since the twenty-five cent

Honorable Richard D. Moss

fee for affidavits is to be paid to the county clerk out of the county treasury that such amount should be retained by the clerk. However, Jasper County is a county of the second class and we must look to the statutes relating to second class counties with regard to compensation.

The general compensation statute for county clerks in all counties of the second class is Section 51.290, RSMo 1949, which reads:

"The county clerk, in all counties of the second class, shall receive the sum of four thousand dollars as annual compensation for his services, to be paid by the county, in twelve equal monthly installments, by warrants drawn on the county treasury. He may also retain, for his compensation, any fees to which he may be entitled for services performed in the issuance of fish and game licenses or permits."

Thus, county clerks receive as annual compensation the sum of four thousand dollars, together with any fees to which they may be entitled for services performed in the issuance of fish and game licenses or permits. In other words, there is a set compensation with one exception which concerns fees for the issuance of fish and game licenses or permits. It is a well established rule of statutory construction that the expression of one thing implies the exclusion of another. We find this rule set forth in the case of *City of Hannibal v. Minor*, 224 S.W. 2nd 598 at page 605:

"* * * There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we have here. It is embodied in the maxim: 'Expressio unius est exclusio alterius' which means that the express mention of one thing, person or place implies the exclusion of another. The application of this principle to the question before us merely serves to emphasize the fact that the City in this case was without authority to include in its ordinance 'automobile repair shops.'"

Honorable Richard D. Moss

See also Kroger Grocery and Baking Company v. City of St. Louis, 106 S.W. 2nd 435, l.c. 439; and State v. Smith, 111 S.W. 2nd 513, l.c. 514.

Another statute relating to this subject is Section 51.400, RSMo 1949, which provides certain fees and compensation to be allowed to, and to be retained by the clerk of the county court for various services performed, but specifically provides that in all counties of the first and second class, and the City of St. Louis, all fees and compensation allowed by said section shall be paid into the county or city treasury as provided by law, by the clerk of the county court, who shall have received any such fees and compensation. Both Sections 51.290 and 51.400 were passed by the legislature in 1945. Therefore, the applicable rule is "that where two acts are passed at the same session of the Legislature, relating to the same subject, type and matter, as here, they are in pari materia, and, to arrive at the true legislative intent, they must be construed together." Hull v. Baumann, 131 S.W. 2nd 721, l.c. 725. The only conclusion to be reached by the application of the foregoing rule in connection with said statutes is that since no further exceptions were made in the case of counties of the second class, and that even though certain fees and compensation can be retained by the county clerks of counties of the third and fourth classes in addition to their set compensation, that such was not the intent of the Legislature in connection with counties of the first and second class and the City of St. Louis.

Of course, Sections 279.050 and 51.290 relate to the same subject matter, and we feel that they must be harmonized if at all possible. The rule is found in the case of State v. Mitchel, 181 S.W. 2nd 496, l.c. 499:

"Statutes are in 'pari materia' when they are upon the same matter or subject. 31 C.J., p. 358; and the rule of construction in such instances proceeds upon the supposition that the several statutes relating to one subject were governed by one spirit and policy and were intended to be consistent and harmonious in their several parts and provisions."

This rule holds true even though the acts relating to the same subject were passed at different times. In the construction of statutes all statutes relating to the same subject are construed together as though they constituted one act. Bredeck v. Board

Honorable Richard D. Moss

of Education of the City of St. Louis, 213 S.W. 2nd 889, l.c. 892. Sections 51.290 and 51.400 were both passed by the legislature in 1945. However, Section 279.050, RSMo 1949, has been in force in the same form for many years. "The settled rule, of course, is that in case of inconsistency the later act controls * * *." State v. Smith, 182 S.W. 2nd 571, l.c. 574. This rule is further set forth in the case of State v. American Insurance Company, 200 S.W. 2nd 1, at page 14, as follows:

"Moreover, where there are two acts on one subject, the rule is to give effect to both if possible, but if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as to repeal the first. Meriwether v. Love, 167 Mo. 514, 67 S.W. 250."

We feel, in view of the foregoing, that it was clearly the intent of the Legislature, having knowledge of the statutes existing at the time Section 51.290, RSMo 1949, was enacted, to restrict the county clerks of counties of the second class to the fees and compensation provided in said section. "It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed." Ward v. Christian County, 111 S.W. 2nd 182, l.c. 183.

CONCLUSION

Therefore, it is the opinion of this department that the County Clerk of Jasper County, Missouri, is not entitled to retain in addition to his compensation the twenty-five cent fee for the taking of affidavits under Section 279.020, RSMo 1949, relating to bounties on wild animals.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. David Donnelly.

Yours very truly,

JOHN M. DALTON
Attorney General

DD:lw