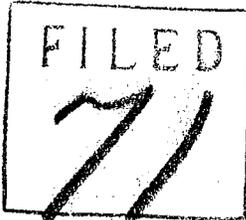


COUNTIES:
CIRCUIT CLERKS: RECORDERS:
COUNTY COURTS:

Circuit clerk and ex-officio recorder of deeds in 3rd class county not permitted to retain fees collected under Section 451.150 and Section 193.350 RSMo 1949. Presiding judge of county court in third class county not to receive compensation under Sec. 3, H. B. 163, 67th General Assembly, for additional duties prescribed by such law if such duties are performed subsequent to December 31, 1954.



January 27, 1955

Honorable W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Mr. Pinnell:

This opinion is rendered in reply to your request reading as follows:

"I would like an opinion from your office on two different and distinct matters. First, in an opinion dated January 10, 1955 and given to Bill Davenport of Christian County you stated that the Recorder of Deeds is entitled to a fee of \$1.00 for recording a marriage license and is further entitled to a fee of \$.50 for each Marriage Certificate filed with him providing that a proper report of same is made. I was wondering whether these fees may be retained by the Recorder individually or whether they are simply fees that must be turned over to the County by the Recorder. I might add that in this County the Offices of Circuit Court and Recorder are combined.

"Second, under Section 49.125 of the laws of 1953 the Presiding Judge is given certain additional duties. Under the original House Bill which is No. 163 the Presiding Judge was given \$300.00 per year additional compensation for these duties. I was wondering

Honorable W. H. Pinnell

whether since Section 49.125 does not specify special compensation and since the original House Bill did whether the Presiding Judge is no longer entitled to additional compensation for these duties. It may be that some other section provides further additional compensation but I have been unable to find same.

"Please let me have an opinion on this point also."

In the first paragraph of your inquiry, quoted above, you have informed that the offices of circuit clerk and recorder are combined in Barry County. Section 483.335 RSMo 1949, as amended, Missouri Revised Statutes, Cumulative Supplement 1953, provides, in part, as follows:

"1. The circuit clerk and recorder in counties of the third class wherein the two offices have been combined, shall receive annually for his services, the following:

* * *

(5) In counties having a population of seventeen thousand five hundred and less than twenty-five thousand, the sum of four thousand six hundred dollars;

* * *

2. 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."

Section 483.335, as quoted above, determines the compensation of a circuit clerk in class three counties where the offices of circuit clerk and recorder are combined. This statute is clear and unambiguous.

Section 59.260 RSMo 1949 provides as follows:

"It shall be the duty of the circuit clerk and recorder of counties of the third class,

Honorable W. H. Pinnell

wherein the offices shall have been combined, and in all counties of the fourth class, 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, that shall have been collected by him as recorder during the month and required to be shown in such monthly report as herein provided, taking duplicate receipts 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."

The marriage license fee of One Dollar which the recorder is obligated to collect under Section 451.150 RSMo 1949, and the recording fee of Fifty Cents to be collected by the recorder under Section 193.350 RSMo 1949, are well within the language of Section 59.260 RSMo 1949, quoted above, which makes it the duty of the recorder in counties of the third class, wherein the offices of circuit clerk and recorder have been combined, to charge, collect and pay over to the county treasurer all moneys that shall have been collected by such recorder.

Attention is next given to your second question concerning the compensation to be allowed the presiding judge of the county court of a county of the third class under the provisions of House Bill No. 163, Laws of Missouri, 1953, p. 381. This law is now found at Section 49.125, Missouri Revised Statutes, Cumulative Supplement, 1953. House Bill No. 163, supra, approved May 25, 1953, contained one additional paragraph not now shown in Section 49.125, supra, and it read as follows:

Honorable W. H. Pinnell

"3. For the duties imposed upon the presiding judge of the county court in counties of the third and fourth class by this section, he shall receive, in addition to the compensation now allowed him by law, the sum of three hundred dollars per year to be paid in equal monthly installments out of the county treasury. This subsection shall expire on December 31, 1954 and shall not be effective after that date. (Underscoring supplied).

The above quoted section 3 of House Bill No. 163, clearly discloses that such section 3 will have no force and effect after December 31, 1954. We find no additional statute providing compensation to the presiding judge of the county court for performing the additional duties outlined in paragraphs 1 and 2 of Section 49.125, supra, from and after December 31, 1954.

CONCLUSION

It is the opinion of this office that in counties of the third class where the offices of circuit clerk and recorder have been combined, the circuit clerk may not retain the one dollar fee for recording marriage licenses under Section 451.150 RSMo 1949, nor the fifty cent fee for recording marriage certificates under Section 193.350.

It is the further opinion of this office that the additional compensation allowed to the presiding judge of the county court in a county of the third class by Section 3 of House Bill No. 163, Laws of Missouri, 1953, p. 381, will not accrue for the additional services prescribed by such law if they are performed subsequent to December 31, 1954.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:vlw