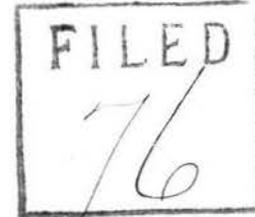


PROSECUTING ATTORNEY: Salary fixed by Sec. 11314 R.S. Mo. 1929  
and fees allowed for convictions in felony  
cases must be turned over to county treasurer.

1-22  
January 19, 1934.



Honorable E.L. Redman,  
Prosecuting Attorney,  
Gentry County,  
Albany, Missouri.

Dear Sir:

This department acknowledges receipt of your letter relative to the fees of your predecessor as Prosecuting Attorney of Gentry County. Your letter is as follows:

"I would be glad to have an opinion from your office concerning what should be done with prosecuting attorney's fees for convictions of felonies in cases where the defendant is insolvent and unable to pay and is sentenced to the penitentiary, and the costs are adjudged against the state, and the state pays to the prosecuting attorney the fee provided for conviction in felony cases.

My predecessor, Mr. E.C. Lockwood, had a few felony cases with convictions where the costs were certified to the state and the costs including the prosecuting attorney's fee are now in the county treasurer's office. If this fee is the individual and personal fee of the prosecuting attorney, of course, he wants it, and that is the question he is raising now with me. In counties such as Gentry County, if that fund does belong to the prosecuting attorney, of course, it will be of benefit to me, and I am willing to turn them over to him providing they belong to him and I wouldn't have to re-account for them.

Enclosed you will find the statement of this question and the brief of Mr. Lockwood, which he made and presented to me. I forward this for your use if it may be of any convenience to you and your office."

## I.

Prosecuting Attorney's Salary fixed by Sec. 11314, R.S. Mo. 1929; not allowed fees for convictions in felony cases.

Prior to 1913 the Prosecuting Attorney was paid a salary and was also allowed to retain certain fees. After 1913 the office was placed on a salary basis and continued so until 1919, when Section 11314, R.S. Mo. 1929 was enacted, under which section your predecessor drew his salary. We quote the pertinent part of said section:

"On and after the first day of January, 1921, the prosecuting attorney shall receive for his services per annum, to be paid out of the county treasury in all counties having a population of less than ten thousand inhabitants, the sum of one thousand dollars (\$1,000.00); in all counties having a population of ten thousand and less than fifteen thousand inhabitants, the sum of eleven hundred dollars (\$1,100.00); \*\*\*\*\*"

The Legislature did not repeal or materially change any of the sections dealing with the fees of prosecuting attorneys; however, under Section 11315, R.S. Mo. 1929, which is as follows:

"It shall be the duty of the prosecuting attorney to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the clerk of the county court, and shall at the end of every quarter make out an itemized and accurate list of all fees in his office which have been collected by him, and one of all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid--said report to be verified by affidavit--and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury,"

the Prosecuting Attorney is compelled to dispose of the fees as directed, and is not permitted to retain the same.

Your predecessor refers to the fact that in counties of a certain population the Prosecuting Attorney's salary is fixed "in lieu of all fees". Section 11314 does not use the phrase "in lieu of all fees" and he therefore concludes that in the absence of such

phrase he should be entitled to the fees mentioned in Section 11783, R.S. Mo. 1929 for convictions obtained in felony cases. We are unable to agree with your predecessor in this respect.

We shall now deal with the phrase "shall receive for his services per annum". As stated before, it was evidently the intention of the Legislature to place the Prosecuting Attorney entirely on a salary basis and compel him to account for all fees received during each month and pay same over to the County Treasurer, retaining none for himself. Referring to the phrase "for his services", we cite you to a case very much in point - Supervisors v. Jones, 119 N.Y., l.c. 343, wherein the Court said:

"The chief ground of his contention is that the act of June, 1881, does not in express terms forbid the receipt of fees by the county treasurer or repeal by implication the laws under which before 1877, the county treasurers were entitled to receive them. But I think that is a very narrow interpretation and more nice than wise. If the statute of June, 1881, stood alone it would, by the force of its own terms, substitute an annual salary for fees. When it declares that the county treasurer shall receive, 'as compensation for his services', an annual salary, it very plainly implies that such salary is to be his sole and only reward. 'For his services' means for all his services, for the entire and complete performance of his official duties, and a specific compensation awarded for those services implies the full and entire compensation to which he is entitled. But this natural interpretation of the language becomes conclusive when the statute is read in connection with the legislation on the same subject. The Act of 1877 defined the phrase 'as compensation for his services' so fully and explicitly as to leave no possible room for doubt. The later legislation on the same subject repeats the phrase, which must retain the meaning attached and not bear a new and different one. The inference from the statutes read together, and in the light of the evil they were intended to remedy, becomes irresistible."

#### CONCLUSION

Conceding the fact that the procedure may be somewhat clumsy and inconsistent as to the collection of fees by the Prosecuting

January 19, 1954.

Attorney relating to persons convicted of felonies and the manner in which they are to be turned over to the Treasurer, the approving of fee bills by the Prosecuting Attorney and the payment of criminal costs by the Auditor, yet, in the light of the above quoted sections, it is the opinion of this department that the salary of your predecessor was fixed by Sec. 11314, supra, at a definite amount, and he cannot retain the fees in question, but must turn them over to the County Treasurer, as provided by Section 11315, supra. He is therefore not entitled to the fees as now claimed by him.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General

OWN: AH