

STATE AUDITOR: State auditor has power, under Section 13100, R. S. Mo. 1939, to compel Recorder of Deeds to show actual amount paid deputies or assistants. If he refuses to do so the matter should be referred to the Prosecuting Attorney.

October 22, 1941

Honorable Robert W. Smart
Prosecuting Attorney
Lawrence County
Mount Vernon, Missouri



Dear Sir:

This Department is in receipt of your letter of October 1, 1941, wherein you make the following inquiry:

"On January 23, 1940, Mr. Roberts, Lawrence County Recorder of Deeds, submitted his annual report to the County Court, making an accounting for all fees collected and received for the year 1939. These fees totaled \$5,756.15. Mr. Roberts then made a deduction of \$1800.00 for 'deputy hire and office help' leaving a balance of \$3,956.15. Since there is a statutory maximum of \$4,000.00 on the Recorder's salary there was no balance remaining to be paid back to the County. Mr. Williams desires to inquire into the correctness of the sum of \$1800.00 which Mr. Roberts deducted from his total fees received and has requested Mr. Roberts to produce either an affadavit, cancelled checks, or receipts, all of which requests have been refused by Mr. Roberts. Mr. Roberts takes the position that since he has submitted his report to the County Court setting up in full all fees received and further setting up the amount which he has deducted for deputy hire and office help, which report was approved by the County Court, that he is under no compunction under the law to produce any further evidence that he has

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paid the amount set up for deputy hire and office help. In order that you may have a complete understanding of the facts, I am inclosing a copy of Mr. Roberts' report to which I have referred so that you may see the exact form in which the items are set up.

"The sole question to be determined is whether or not the State Auditor or his representative, under the circumstances which I have above outlined, has the authority to force the production of evidence on the part of the Recorder to prove that he has paid for deputy hire and office help in the amount which he deducts in his statement for same."

Article III, Chapter 87, Section 13094 to 13104, inclusive, R. S. Missouri, 1939, refers to the duties of the state auditor in connection with auditing the state institutions as well as all county officers. Section 13094, R. S. Missouri, 1939, specifically refers to the recorder of deeds including every county in the state.

Section 13098, R. S. Missouri, 1939, makes it a misdemeanor for any county officer to refuse to comply with the provisions of Article III. We herewith set forth the terms of Section 13100, R. S. Missouri, 1939, as we believe it is the pertinent section in answering your question:

"If any such officer or officers shall refuse to submit their books, papers and concerns to the inspection of the auditor of the state, or any of his examiners, or if anyone connected with the official duties of the state, county or institution shall refuse to submit to be examined upon oath, touching the officers of such county, the auditor of state shall report the fact to the prosecuting attorney, who shall

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institute such action or proceedings against such officer or officers as he may deem proper."

Under the Constitution, especially Article IX, Section 13 provides, in part, that every officer shall make a return quarterly to the County Court of all fees received by him and of the salaries actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit. The statement signed by the recorder of deeds is not verified and hence is open to attack as to its verity or correctness. By the terms of Section 13100, supra, it appears to be a matter which should be handled by you, as prosecuting attorney, after proper facts and report is submitted to you by the examining officer, and prosecution can be bottomed on Section 13098.

We call your attention to the fact that, by the terms of Section 13100, the examining officer may call for examination or testimony of any one connected with the official duties of the county. Therefore, by way of suggestion, it is possible that the state auditor or his deputies could examine the deputies and assistants who have served under the recorder of deeds and determine from such deputies and assistants the actual amount that was paid to them.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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