

CIRCUIT COURTS:  
FEES AND SALARIES:

Circuit Judge entitled to change of venue fee earned under Section 1074, R.S. Mo. 1939, but not paid to the circuit judge prior to the effective date of S.C.S.S.B. No. 442.

*W.C. Smith*

FILED  
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December 3, 1946

*12-7*

Mr. John M. Holmes  
Executive Secretary  
Judicial Conference of Missouri  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion. Restating your request, for the sake of brevity, you inquire if a case is tried or finally disposed of on a change of venue under Section 1074, R.S. Mo. 1939, and the change of venue fee has not been paid to the judge hearing the cause prior to the effective date of Senate Committee Substitute for Senate Bill No. 442, would said judge be entitled to said change of venue fee after the effective date of said bill.

From your request, we assume that at the time the cause was heard that Section 1074, R.S. Mo. 1939, was in effect and that S.C.S.S.B. No. 442 was not effective. Furthermore, that the matter was tried or disposed of prior to the effective date of said bill, but the Circuit Judge who heard said cause had not been paid the \$10.00 change of venue fee.

In *Smith v. Pettis County*, 136 S.W. (2d) 282, the court held that fees, although emoluments of the office, are allowed to and become the property of the judge himself. It is also well established that a public officer claiming compensation for official duties must point out the statute authorizing such payments, otherwise the performance of such services is deemed to be gratuitous. See *Nodaway County v. Kidder*, 129 S.W. (2d) 357, 344 No. 795.

This department recently held in an opinion that that part of Section 1074, R.S. Mo. 1939, allowing a circuit judge the \$10.00 change of venue fee was repealed by S.C.S.S.B. No. 442, passed by the 63rd General Assembly, which bill fixed the salary and expenses a circuit judge shall receive, and further provided that said salary and expenses shall constitute the total salary and expenses of said judge.

In *Givens v. Daviess County*, 107 Mo. 603, l.c. 610, the court, in holding that an officer was entitled to the salary provided by law at the time services were rendered for every day he held office, said:

"The salary to which plaintiff was entitled did not depend, in the least, upon the value of his services, but altogether upon what action the court took in the premises. Every day he held the office the law vested in him a right to a due proportion of the salary, as at that time fixed, and, consequently, an order changing the compensation could not have a retrospective operation and divest from him what was his already. Hence, when the order of December 6 was made, plaintiff had the undoubted right to demand and collect, as salary, at the rate of \$1,500 per year from the commencement of his term, January 24, 1885, to that date."

In the case of *Smith v. Pettis County*, 136 S.W. (2d) 282, Para. 15, the court in passing upon this question stated:

"\* \* \* A probate judge may only collect fees for services which he has already performed. These services may be performed only while he is in office. His fees can accrue only while he is in office. These provisos only limit what he may keep. We said in *Corbin v. Adair County*, 171 Mo. 385, 71 S.W. 674, that a circuit clerk can demand and recover his uncollected fees from his successor. A suit for fees against a clerk's successor was upheld in *Lycett v. Wolff*, 45 Mo. App. 489."

Also, in the case of *Corbin v. Adair Co.*, 171 Mo. 385, l.c. 389, the court said:

"\* \* \* To the amount of the difference between the fees collected by him which he had earned in 1898 and retained, and the amount earned and not collected for that year, not exceeding \$1,600, he can demand and recover the uncollected fees from his successor, and his own evidence shows they will be more than sufficient.  
\* \* \* \* \*"

Also, in the case of Lycett v. Wolff, 45 Mo. App. 489, the court in passing upon the following statement of facts,

"This case is here on the defendant's appeal. The plaintiff was elected to the office of circuit clerk of St. Louis county, at the November election, 1878. He was inducted into office on the first day of January, 1879, and performed the duties pertaining to such position for the term of four years. In the petition it was alleged that the plaintiff, as such clerk, was entitled under the law to receive out of the fees earned by him during his term of office the sum of \$9,000, that is a yearly salary of \$2,250; that, during the time he held the office, he only received of the fees collected by him, on account of his salary, the sum of \$8,070, leaving a balance of \$930 due on his salary for the four years; that, at the expiration of his term, he had earned as clerk a large amount of fees which had not been collected; that the defendant was his successor in office, and had collected the sum of \$930 of the fees so earned, and had refused to pay them to the plaintiff."

said:

"\* \* \* In Thornton v. Thomas, 65 Mo. 272, it was held that the fees of the office constituted a trust fund, to be applied in the payment of deputies and assistants, and the salary of the clerk fixed by law, and the surplus, if any, after such payments, to be paid into the treasury of the county. The question, as to whether one of these trusts would be to supply any deficiency in the receipts of a former year to cover expenses and salaries, was neither before the court nor decided in that case. If the annual fees earned by a clerk, as is held in the case above cited, are chargeable with a trust in favor of such clerk to the extent of his salary, and the compensation

allowed his deputies, it logically follows, that, whenever collected, they should be applied to the discharge of that trust."

The courts have held that a statute must be held to operate prospectively only, unless the intent is clearly expressed that it shall act retrospectively, or the language of the statute admits of no other construction. See Lucas v. Murphy, 156 S.W. (2d) 686.

Section 13, Article I, Constitution of 1945, is a prohibition against passing laws retrospective in their operation, and reads as follows:

"That no ex post facto law, nor law impairing the obligation of contracts; or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

#### CONCLUSION

Therefore, it is the opinion of this department that the change of venue fee hereinabove mentioned was earned by the circuit judge prior to the effective date of S.C.S.S.B. No. 442, and, at the time said fee was earned, Section 1074, R.S. Mo. 1939, was in full force and effect, and the mere fact that said fee had not been paid to the circuit judge at the time S.C.S.S.B. No. 442 became effective does not prevent the circuit judge from receiving said fee.

Respectfully submitted,

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APPROVED:

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