

PROSECUTING ATTORNEYS: The compensation provided for by Sec. 470.210
FEES: RSMo 1949, for prosecuting attorneys should
be paid over by the prosecuting attorney to
the county treasurer, and is not to be retained
by the prosecutor.

FILED
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December 16, 1955

Honorable Max Oliver
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I would request that your office render an official opinion concerning the right of the Prosecuting Attorney to retain the compensation allowed him by the Circuit Court under the provisions of Section 470.210 RSMo 1949, relating to escheats."

The above Section 470.210 reads:

"All moneys realized from the sale of any real estate, after paying all costs of such proceedings, and such compensation to the prosecuting attorney as shall be allowed by the court in which such order of sale is made, shall be paid by the sheriff into the state treasury within ninety days after the receipt thereof; and if said sheriff fail to pay said money into the state treasury within ninety days after the receipt thereof, he shall be proceeded against in the same manner as is provided in section 470.030. Moneys so paid into the state treasury shall be credited into the fund to be known and designated as 'Escheats,' and shall be withdrawn or disposed of as other moneys paid into the state treasury under this chapter."

Your question is whether the prosecuting attorney is permitted to retain the compensation mentioned above, or whether he shall pay it over to the treasurer of the county. It is our belief that the latter procedure is correct.

Section 56.340 reads:

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"The prosecuting attorney, in counties of the second, third and fourth classes, shall charge upon behalf of the county every fee that accrues in his office and 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 will immediately file with the clerk of the county court, and shall at the same time 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."

We believe that the above is wholly inclusive of all compensation obtained by a prosecuting attorney, exclusive of his salary, and that it includes the compensation provided for by Section 470.210.

CONCLUSION

It is the opinion of this department that the compensation provided for by Section 470.210 RSMo 1949, for prosecuting attorneys, should be paid over by the prosecuting attorney to the county treasurer, and is not to be retained by the prosecutor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/ld