

CIRCUIT CLERK: Not entitled to fee of 50¢ for attaching the court seal to each jury script under Secs. 8763, 8764, 8765 and 8766, R.S. 1929.

December 27, 1934.



Hon. Will H. Hargus,
Prosecuting Attorney,
Cass County,
Harrisonville, Mo.

Dear Sir:

We are in receipt of your letter of December 15 requesting the official opinion of this department regarding the following question:

****as to whether or not the Circuit Clerk is entitled to a fee of fifty cents (\$.50) for attaching the court seal to each jury script. I refer you to sections 8763, 64, 65 and 66 Revised Statutes of Missouri 1929; also, section 11785 Revised Statutes, 1929.

As you know, beginning January 1, the office of Circuit Clerk goes on a fee basis. His compensation in our county, at best, will be small and if he is entitled to this additional fee, I would appreciate a ruling by the first of January."

The statutes mentioned in your letter are referred to in the opinion of the Court, which will hereinafter be quoted; we will, therefore, not set them out in full in this opinion. The sections in question were fully discussed in the case of Ford v. K.C., St. J. & C.B. Ry. Co., 29 Mo. App. 616, wherein the Court said (l.c. 622-625):

"The real question, therefore, is, is the compensation allowed by the section above set out, compensation for all the services mentioned therein or compensation only for the service

rendered by the clerk in issuing scrip when required by said section? Since the compensation allowed by the statute is the same compensation 'as is now allowed by law for like service in issuing scrip to grand jurors', in order to answer the question last suggested, it is necessary to consider the statute allowing compensation for the 'like service' rendered by the clerk in issuing scrip to grand jurors. Section 2790, Revised Statutes, provides the 'pay and per diem' for grand and petit jurors.

Section 2791 is as follows: 'The clerk of the court shall keep a book, in which he shall enter, upon the application of each juror, the number of days such juror shall have served, and the number of miles necessarily traveled in obedience to the summons to serve on the jury, and such entry shall be verified by the oath of such juror.'

Section 2792 is: 'Upon the demand of such juror the clerk shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the county treasury.'

Section 2793 is: 'The clerk shall receive one dollar and fifty cents for his services at each term of the court in complying with the provisions of the two preceding sections.'

The compensation thus allowed the clerk for his services in issuing scrip to grand jurors is, not only for the services performed in actually issuing the scrip, but also for all the services mentioned in section 2791 rendered by the clerk, necessary and preliminary to the issuing of the scrip. Those services, necessary and preliminary to issuing scrip, are exactly the same as the services for which the charge in controversy here was made, and which, by the provisions of section 5621, are necessary before the issuance of scrip in those cases where its issuance is authorized. All the services mentioned in section 5621, in other words, are like

those required in issuing scrip to grand jurors. The compensation provided by section 5621 is the same compensation as that allowed for like service in issuing scrip to grand jurors. Since the services required in issuing scrip to grand jurors are like and in fact the same as the services mentioned in section 5621, it is clear that the compensation is intended to be in full for all the services so mentioned. The compensation is the same for like services. The services in the two cases are like. Whatever is the compensation in one case is the compensation in the other. This conclusion may be supported by other considerations. After setting out the various services to be performed by the clerk in civil and criminal cases alike, on the application of any witness to have his fees allowed, section 5621 makes a distinct provision for the issuance of scrip to witnesses attending before the grand jury, and then provides compensation, to use the words of the section 'for said services.'

Unless the provision allowing compensation limits it to certain of the services mentioned before in the section, the compensation is, as a matter of course, for all of said services. The compensation allowed is, by the terms of the section, declared to be the same as that allowed 'for like service in issuing scrip to grand jurors'. Certain it is, whatever services the clerk must perform in issuing scrip to grand jurors for a fixed compensation, he must perform in issuing scrip to witnesses attending before the grand jury, if necessary, for the same compensation.

It must be conceded that no charge could have been lawfully made for the services in controversy had the witnesses been attending before the grand jury. The statute, however, makes no distinction between such witnesses and witnesses summoned in civil and other criminal proceedings; therefore, what is true in reference to witnesses attending before the grand jury is also true in reference to witnesses in all proceedings, both civil and criminal.

The action of the clerk in making the charge in controversy was based upon section 5603, Revised Statutes, which provides that the clerks of the circuit courts of this state shall receive in all civil proceedings fees for their services as therein prescribed. Among the fees prescribed by said section is the fee of twenty-five cents 'for oaths and certificate to affidavit.' Section 5604 prescribes the fees for services rendered by clerks of courts having criminal jurisdiction in criminal proceedings. Among the fees fixed by that section is the fee of fifteen cents 'for certificate to affidavit.' The two services, although the words defining them are not exactly the same, are in fact one and the same service. The words defining the first service are in the conjunctive, but since there cannot be a certificate to an affidavit without an oath, the word, 'oaths' adds nothing to that service; the service after all being the making of a certificate to an affidavit. The rule in the construction of statutes, in reference to costs is, that they must be construed strictly, 'and that an officer cannot legally claim remuneration, unless the state has expressly conferred the right.' *Shed v. Railroad*, 67 Mo. 690. By section 5621, the clerk is required to swear the witness to the truth of the facts contained in the entry made by the clerk, but he is not required to preserve the oath in the form of an affidavit. If we bear in mind that section 5621 makes no distinction between witnesses in civil and in criminal proceedings, this conclusion is strengthened by the provisions of section 5605, which are: 'No fee shall be charged by any clerk, in any criminal case, against the state or any county, unless it is expressly allowed in the foregoing section.' In obedience to this declaration of the legislative will, it must be held that the oath of the witness need not be preserved in the form of an affidavit, so far as concerns criminal cases, because section 5621 does not expressly require it, and as before said there is no distinction made by that section between civil and criminal cases. The clerk was not entitled, under the statutes cited, to the fees charged."

CONCLUSION

It is very plain from the above decision that the Circuit Clerk is not entitled to a fee of 50¢ for attaching the court seal to each jury scrip under Sections 8763, 8764, 8765 and 8766, R.S. Mo. 1929, nor in view of the foregoing opinion do we construe the Circuit Clerk to be entitled to the 50¢ fee under Section 11785, R.S. 1929.

Respectfully submitted,

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APPROVED:

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