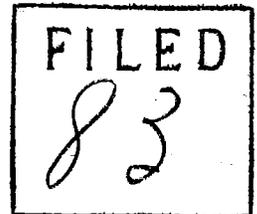


PROBATE JUDGES: Fees earned prior to November 23, 1943,  
belong to the then incumbent of the office  
without regard to actual date of collection.



February 27, 1945

Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Attention Mr. B. E. Ragland, Chief Clerk

Dear Sir:

Reference is made to your letter under date of  
February 23, 1945, reading as follows:

"We request an opinion on the following  
subject: A Probate Judge's annual salary  
in a certain county is fixed at \$1200.00,  
under the provisions of Laws of 1943, page  
869, effective November 22, 1943.

"During the year 1944 said Probate Judge  
collected and paid to the county treasurer  
\$1157.35; of this amount \$402.75 repre-  
sents fees earned prior to November 22,  
1943. Is the Probate Judge entitled to  
reimbursement of the \$402.75, from the  
county?"

The fees mentioned in your letter were earned under  
the provisions of Section 13404, R. S. Mo. 1939. As was  
said by the Supreme Court in the case of Smith v. Pettis  
County, 136 S. W. (2d) 282, "It is necessary to bear in  
mind that such 'fees' although an emolument of the office  
are allowed to and become the property of the judge him-  
self. While the office invests the officer with title to  
the fees they do not belong to the office but to the of-  
ficer. See Mayfield v. Moore, 53 Ill. 428."

This rule follows the decision in the case of Givens, v. Daviess County, 107 Mo. 603, l. c. 610, from which we quote:

"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."

We, therefore, conclude that although the compensation of an officer may be reduced during his term, yet such reduction cannot affect salary or fees earned prior to such time, as to give that effect to the law reducing the compensation would be to construe the law as retrospective, and consequently in violation of Article II, Section 15, of the Constitution of Missouri, reading, in part, as follows:

"That no \* \* \* law \* \* \* retrospective in its operation, \* \* \* can be passed by the General Assembly."

Further, 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. Lucas v. Murphy, 152 S. W. (2d) 686. No such intent appears in the amendment to Section 13404, R. S. Mo. 1939, appearing in Laws of 1943, at page 868, nor is the language contained therein incapable of being otherwise construed.

#### CONCLUSION

In the premises, we are of the opinion that Section 13404A, Laws of 1943, page 868, is prospective in its nature;

Honorable Forrest Smith

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February 27, 1945

that such statute did not affect the title of the then incumbent of the office of probate judge to fees earned prior to November 23, 1943; and that such probate judge is entitled to such fees so earned whenever collected, subject to the limitations as to amount found in Section 13404 of Article II, Chapter 99, Revised Statutes of Missouri, 1939.

Respectfully submitted

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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HARRY H. KAY  
(Acting) Attorney General

WFB:HR