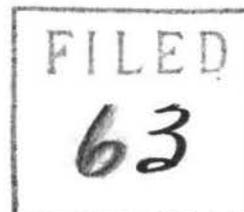


PROBATE JUDGE: Probate Judge acting as own clerk not entitled to receive compensation other than his compensation as probate judge.

November 28, 1949

11/28/49

Honorable John F. Moeckel  
Judge of Probate Court  
Cape Girardeau County  
Jackson, Missouri



Dear Sir:

Your recent request for an official opinion has been assigned to me to answer.

Your request is stated as follows:

"I have been requested to furnish an opinion on the following proposition:

"Section 5, Page 1515, Laws of Missouri 1945, provides for the appointment and compensation of probate clerks.

"Where a probate judge serves ex-officio as his own clerk, in the absence of a regularly appointed clerk, is such judge, as ex-officio clerk, entitled to claim payment from the county, the salary authorized to be paid a regular appointed clerk, for his services as ex-officio clerk, in addition to his regular compensation of Judge?

"or

"Is a Probate Judge in addition to his salary as Judge entitled to be paid a salary as ex-officio clerk of his own court?"

In regard to the above we would first call your attention to the well established rule of law that before a public officer can claim compensation for public services he must first point out the specific statute authorizing the payment of such compensation. We would also call your attention to the equally well established legal principle that in case the statutes are ambiguous upon the point of compensation they are to be strictly construed against the public officer.

A restatement of these principles was made in the case of *Nodaway County v. Kidder*, 129 S.W.(2d) 857, l.c. 860, where it is held:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28, 149 S.W. 638; *King v. Riverland Levee District.*, 218 Mo. App. 490, 493, 279 S.W. 195, 196; *State ex rel. Wedeking v. McCracken*, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. *State ex rel. Buder v. Hackman*, 305 Mo. 342, 265 S.W. 532, 534; *State ex rel. Linn County v. Adams*, 172 Mo. 1, 7, 72 S.W. 655; *Williams v. Chariton County*, 85 Mo. 645."

Many other cases could be cited in support of this principle but we feel it unnecessary to do so.

From the above, therefore, we adduce that if you, serving as probate judge and receiving compensation therefor, are also entitled to receive additional compensation for serving ex officio as clerk of your court, that you must point out a statute which clearly provides that you are entitled to such additional compensation.

A thorough search of Missouri law fails to reveal a statute so providing.

Such a search does, however, reveal a number of statutes which clearly indicate the contrary, i.e., that a probate judge, serving ex officio as clerk of his court is not entitled to receive compensation for his service as clerk in addition to his compensation as probate judge.

Section 24, Article V, of the 1945 Constitution states:

"All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office. Until the end of their present terms probate judges shall continue to receive compensation and clerk hire as now provided by law. The salaries of magistrates shall be fixed by law. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. Judges may receive reasonable traveling and other expenses allowed by law. The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

It will be noted that the foregoing section of the Constitution provides that no judge or magistrate shall receive any other or additional compensation for any public services in addition to his salary as probate judge. We believe that this provision contemplates that probate judges are to be compensated for all services, rendered by them as public officers, by their salaries as probate judges.

Apparently with the intention of effectuating the foregoing provision of the Constitution the 1945 Legislature by Senate Bill 203 (Laws Mo. 1945, p. 763) passed the following law:

"No judge of probate shall sit in a case in which he is interested, or in which he may have been counsel, or a material witness \* \* nor shall the judge of such court act as deputy or clerk for any other public official or receive any compensation for any public service other than his compensation as such judge; \* \* \*." (Underscoring ours.)

From the above we believe it to be clear that probate judges may not receive additional compensation for acting as clerks.

We may point further to Section 5, Laws 1945, page 1515, which states:

"In all counties now or hereafter having more than 30,000 inhabitants, (which Cape Girardeau County does) the probate judges shall appoint

their own clerks, assistants, and stenographers, and shall determine their number and their salaries by order of record and may remove them when in the discretion of such judges it is deemed advisable. \* \* \* \* " (Underscoring ours; parenthesis ours.)

If, therefore, a probate judge acting as clerk of his court could draw compensation for acting as clerk he would, in view of the above, have to fix his own salary as such clerk, which clearly is contrary to public policy and which has never been and is not now the law in Missouri in relation to any public officer.

CONCLUSION

It is the conclusion of this department that where a probate judge serves ex officio as clerk of his court such judge, as ex officio clerk, is not entitled to compensation for his services as clerk aforesaid in addition to his salary as probate judge.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

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APPROVED:

J. E. TAYLOR  
Attorney General

