

JUSTICE OF THE
PEACE:

A justice of the peace in St. Louis County must account for and pay over to the county treasurer the fee of \$2.00 he receives for solemnizing a marriage.

December 11, 1939

Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri



Dear Sir:

This will acknowledge receipt of your letter of December 4, 1939, as follows:

"This office desires an opinion from your office relative to the meaning of Section 2369, Laws of Missouri, 1939, page 341.

The question is, was it the intention of the legislature to require the various justices of the peace in St. Louis County to pay over to the Treasurer of the County, the fees collected for their services for the solemnization of marriages?"

A justice of the peace is authorized to solemnize marriages (Section 2976 R. S. Mo. 1929) and is allowed a fee of Two Dollars (\$2.00) for each solemnization (Section 11778 R. S. Mo. 1929).

Section 2369, Laws 1939, page 341, provides:

"Each justice of the peace shall pay over all fees collected for his services to the treasurer of the county in which he is elected every thirty days, accompanied by a statement thereof sworn to by him, and all other costs collected by said justice of the peace shall be paid by him every

thirty days, accompanied by like sworn statement, to the constable of his district, who shall be responsible for the same and pay over the same to the parties entitled thereto, as is now required by law in cases of costs collected by or paid to said constable."

It will be noted this section divides the collections of the justice into two classes - fees and costs. We are not concerned with the costs here. The section requires the justice to pay over "all fees collected for his services" to the county treasurer every thirty days.

Section 2367, Laws 1939, page 341, provides for each justice in certain counties to give a bond conditioned that he account for and pay to the proper officer "all the money received by him by virtue of his office."

This portion of the bond condition has reference to the fees and costs required to be accounted for in Section 2369, supra.

The question here is determined by ascertaining whether the Two Dollars (\$2.00) a justice is entitled to charge for solemnizing a marriage is one collected by him for "his services" as a justice and "received by him by virtue of his office."

Section 11778, R. S. Mo. 1929, fixes the fees of a justice in the following language: "Justices of the peace shall be allowed fees for their services as follows: For solemnizing a marriage \$2.00." In other words, performing marriages is a part of the services of a justice of the peace for which a fee is fixed.

A justice of the peace is only entitled to perform marriages by reason of the fact that he holds the office of a justice of the peace. In State v. National Surety Co. 39 S. W. (2nd) 1.c. 583 (Tenn.) it is stated, "Act done virtute officii are where they are within the authority of

the officer.'" In State ex rel v. Goss 296 S. W. 431 (Mo. Sup.), the point for determination was whether the compensation of a circuit judge as jury commissioner could be considered in determining the fees a probate judge can retain. A probate judge is entitled to retain in fees a sum equal to the salary of the circuit judge "for all duties by virtue of the office" of circuit judge. The court on this point said, l.c. 432:

"It is argued that 'the service of a judge as a jury commissioner is not a duty by virtue of the office of circuit judge.' The words 'by virtue,' as used, mean 'because of; through; in pursuance of.' Stroud's Judicial Dictionary; New Standard Dictionary; Webster's New International Dictionary. The circuit judge is not appointed or elected to the position of jury commissioner. No commission as jury commissioner is issued to him. He takes no oath of office as jury commissioner, but performs this ministerial duty under his oath as circuit judge. To be jury commissioner one must be circuit judge. When the term of office of the circuit judge expires he ceases to be jury commissioner. We think 'the service of a judge as jury commissioner is a duty by virtue of the office of circuit judge,' and so rule."

That case, in principle, is authority for the instant question and it is clear under the rule there announced that the fee a justice is permitted to receive for solemnizing a marriage is one received "by virtue of his office."

The case of St. Louis v. Sommers 148 Mo. 398 is no authority for the instant question, due to the dissimilarity in the statutes involved. The statute in that case concerned the "fees and costs collected in said courts," while the statutes under consideration here concern "all fees" and "all

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the money" with no qualification be made as to the source that can be said to confine it to fees received in a judicial capacity.

CONCLUSION

Therefore, it is our opinion that a justice of the peace in St. Louis County must account for and pay over to the county treasurer the fee of Two Dollars (\$2.00) he receives for solemnizing a marriage.

Very truly yours,

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Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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