



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 28, 1978

ATTORNEY GENERAL OPINION NO. 78-273

Ms. Marguerite Larson
Clerk of the District Court
Cloud County Courthouse
Concordia, Kansas 66901

Re: Counties--Fees--Clerks of District Courts

Synopsis: Fees assessed for the execution of passport applications and papers in naturalization cases which are collected by the clerks of the district courts may no longer be retained by such clerks. The 1978 legislature expressly repealed language of K.S.A. 1977 Supp. 28-170 which formerly permitted the clerks to retain such fees. That same legislature inserted language in lieu of the repealed language which now denies those fees to the clerks, and requires them to be deposited in the county general fund.

* * *

Dear Ms. Larson:

You inquire whether clerks of the district courts may retain fees which are assessed for the execution of applications for passports and naturalization papers, or whether such fees must be deposited in the county general fund.

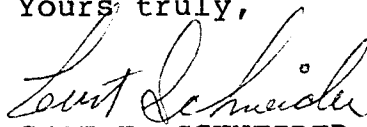
K.S.A. 1977 Supp. 28-170(b) provided that all fees for naturalization cases and passports "shall accrue to the clerk of the district court in addition to any and all other remuneration allowed to such clerk by statute." This section was amended by 1978 House Bill No. 3289, found at ch. 105, § 10, L. 1978, to provide in pertinent part thus:

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"The fees for such entries, certificates and other papers as may be required in naturalization cases and passports shall be such as are prescribed by the federal government and hereafter shall when collected be disbursed as prescribed by the federal government. All fees charged in accordance with subsections (a) and (b) [which includes naturalization and passport fees] or any money received for any services performed which may be required by law, shall when collected be paid into the county treasury and become a portion of the general fund of the county. . . ."

As you point out, the execution of applications for passports and naturalization papers is not a duty that is required by law of the clerks of the district courts. However, this subsection as amended required not only that all fees which are received for any service which is required by law, but also any fees which are charged in accordance with subsection (b), shall be deposited into the county general fund. Section (b) directs that passport and naturalization fees be assessed as prescribed by the federal government. Thus, they are fees charged by the clerk in accordance with subsection (b), and as a result, are required to be deposited in the county general fund. The 1978 legislature, for whatever reason, expressly deleted and repealed language which formerly authorized the clerks of the district courts to retain such fees, and substituted therefor language which expressly requires such fees to be deposited in the county general fund. If this provision is to be changed, it will take further legislative action. I am constrained to conclude that the clerks of the district courts are no longer permitted to retain the fees which were permitted to them formerly, prior to the 1978 amendment.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj