

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS.

**COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, ETC. -
COMPENSATION BOARD GENERALLY - SUPPLIES AND EQUIPMENT.**

All fees and commission income of circuit court clerk, except income received for performance of services unrelated to office, are subject to statutory reporting and distribution system. Passport application fees constitute fee and commission income of clerk's office. Clerk has no authority to submit such fees directly to local government to help offset office expenses and salaries.

The Honorable D. Bruce Patterson

Clerk, Circuit Court of Rockbridge County

December 18, 1998

You ask whether fees received by circuit court clerks for processing passport applications as agents for the United States Department of State may be paid to the locality to help offset the costs of office equipment, furniture and fixtures, utilities, and the salaries of part-time employees.

You advise that the Passport Services branch of the Department of State often designates the clerk's office in a jurisdiction as its local agent for processing passport applications. The State Department establishes the application and processing fee, which is paid to the circuit court clerk's office by the applicant when the application is processed. You further advise that, because the processing of passport applications is not mandated by state law, the Auditor of Public Accounts does not audit passport receipts and the Compensation Board does not consider this function when establishing workload measures and staffing standards for circuit court clerks' offices. You ask whether, under these circumstances, the clerk may submit the passport processing fees directly to the locality.

The law establishing the amount, source and method of payment of the salaries and office expenses of circuit court clerks is set out in the general appropriation act and in Titles 17.1 and 15.2 of the *Code of Virginia*.¹ Pursuant to § 17.1-287, the General Assembly sets the annual salaries of circuit court clerks in the general appropriation act.² Section 15.2-1636.18 provides that the Compensation Board is to determine the number of deputies and assistants needed for the office, the compensation of such deputies and assistants, any allowance to be made for office expenses, and the manner in which the compensation is to be paid. In addition, § 15.2-1656 requires the governing body of a county or city to provide the circuit court clerk with supplies and equipment.

Section 17.1-283(A) requires every circuit court clerk to file monthly with the Compensation Board,

a full and accurate statement showing all such fees, allowances, commissions, salaries or other compensation or emolument of office, derived from the Commonwealth or any political subdivision thereof, or from any other source whatever, collected or received by him.

The statements, which are to show the source of the collections and the date collected, are to be verified by a procedure adopted by the Compensation Board and the Auditor of Public Accounts.³ The statements also are to show

all sums actually paid for necessary office expenses, premiums on official bond of the principal and deputies, name and amount of compensation to each deputy or assistant, and a detailed statement of every other expense in connection with the administration of the office actually paid out.^[4]

Based on these statements of the collections and the payment of the expenses of the clerk's office, § 17.1-285(A) provides for the distribution of any excess fees collected by the clerk's office:

The Commonwealth shall be entitled to one-third of the excess fees collected by clerks as required to be reported under § 17.1-283 and the governing body of the county or city shall be entitled to two-thirds of the excess fees collected unless otherwise provided by law. The Compensation Board shall determine on an annual basis by June 30 of each year the methods by which excess fees shall be disbursed.

Section 17.1-284 states how the excess fees are to be determined:

In determining the excess, if any, to be paid into the state treasury by the clerks, all fees, allowances, commissions, salary or other compensation or emolument of office derived from the Commonwealth or any political subdivision thereof, or from any source whatever, shall be included and enter into the determination of the excess to be paid.

It is my opinion that the language "from any source whatever" used in describing collections under § 17.1-283(A) and excess fees under § 17.1-284 indicates a clear legislative intent to encompass within the reporting and distribution system all fees received by the office, regardless of whether the fees are mandated by state law or are audited by the Auditor of Public Accounts. The General Assembly has excluded from the determination of the fee and commission income of a circuit court clerk only income from "private services performed on a personal basis which are completely unrelated to the office."⁵ The fees collected for processing passport applications clearly do not fit within this exclusion. It is thus my opinion that such fees constitute fee and commission income of the clerk's office and that the circuit court clerk has no authority to submit the fees directly to the local government.

¹At its 1998 session, the General Assembly revised and recodified the laws pertaining to the salaries and the collection of fees by certain officials, including circuit court clerks. See 1998 Va. Acts ch. 872, at 2128. The legislation, most of which was effective October 1, 1998, repealed Title 14.1 and added Title 17.1. *Id.* at 2128, 2150-2205. The legislation also added numerous sections to Title 15.2. *Id.* at 2128, 2135-49.

²See 1998 Appropriation Act, 1998 Va. Acts ch. 464, § 1-29, Item 76(A.1), at 666, 719.

³Section 17.1-283(A).

⁴Section 17.1-283(B).

⁵1998 Va. Acts, *supra* note 2, § 1-29, Item 76(B), at 720.