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1. CHILDREN — PAYMENTS FOR SUPPORT OR AS ALIMONY — CLERK OF COURTS, UNDER COURT ORDER — REQUIRED TO ACCEPT PAYMENTS — CHARGE AND COLLECT FEE FROM PAYER — COMMISSION 1% ON FIRST THOUSAND, $\frac{1}{4}$ OF 1% ON SUMS EXCEEDING THOUSAND DOLLARS.
2. DUTY CLERK OF COURTS TO REPORT UNPAID COMMISSIONS TO PROSECUTING ATTORNEY — SECTION 2979 GENERAL CODE.

SYLLABUS:

1. Clerks of Courts are required to accept all payments for the support of children or as alimony, when ordered by the court, and in connection therewith are required to charge and collect from the persons making such payments, a commission of one percentum on the first one thousand dollars and one-fourth of one percentum on all sums exceeding one thousand dollars.

2. If such commissions are not paid, it is the duty of Clerks of Courts to make a report thereof to the prosecuting attorney in accordance with the provisions of section 2979, of the General Code.

Columbus, Ohio, January 14, 1942.

Hon. John M. Kiracofe, Prosecuting Attorney,
Eaton, Ohio.

Dear Sir:

This will acknowledge receipt of your communication, which reads as follows:

“The Clerk of Courts has requested an opinion from your office in regard to costs in cases where alimony and support are paid into the office of the Clerk in divorce cases and non-support cases.

In our county, the Clerk of Court receives each week, from quite a number of persons weekly stipends for the support of children in cases growing out of divorce actions and non-support cases. Several weeks ago the State Examiner ordered the Clerk of Courts to deduct from the support payments one percent poundage. Since the examiner raised the question of poundage the Clerk hesitates to take these payments, for the reason that there might be a finding against him for the amount of poundage on these payments, which amounts to quite a lot in the course of a year. Practically all of the payments come to the clerk by mail, in the amount ordered by the Court to be paid as support, with no poundage included.

The clerk is interested in knowing whether or not he would be liable to the county for this poundage, which should be collected as costs, if it is not paid at the time he receives the money, or should he refuse the money unless it is accompanied by an additional one percent as costs. If the Clerk is liable for this cost, any finding thereby made against him by the Examiner, he will refuse to accept these payments. If it does not incur a liability on the part of the Clerk, he will receive the payments and then at stated intervals will forward a cost bill to the defendants for the additional costs or the Court will order that he pay additional money about every six months for that purpose. We would appreciate very much your opinion and advice on which procedure would remove any liability on the part of the Clerk of Courts."

As viewed by me, your first question resolves itself into an inquiry as to whether it is the duty of a Clerk of Courts to charge a one percent commission upon alimony and support payments received by the Clerk, to be disbursed pursuant to an order of Court, and upon which party is placed the burden of paying such commission.

The General Code of Ohio provides, sections 2900 and 2901, that the Clerk of Courts shall charge and collect:

" * * * for receiving and disbursing money, other than costs and fees, paid to such clerks in pursuance of an order of court or on judgments, and which has not been collected by the sheriff or other proper officer on order of execution, *to be taxed against the party charged with the payment of such money*, a commission of one percent on the first One Thousand Dollars (\$1,000.00) * * *." (Emphasis mine.)

A former Attorney General was presented with the question of whether the one percent commission provided for in the above section applies to receipts of alimony by the Clerk, ordered by the Court to be paid to the Clerk and to be disbursed by him. In an opinion rendered in response thereto (Opinions of the Attorney General for 1916, Vol. I, page 230) it was held:

"Clerks of courts are required to charge and collect a commission of one per centum on the first one thousand dollars

and one-fourth of one per centum on all exceeding one thousand dollars of all money to them paid pursuant to an order of court or on judgments, except payments of costs and fees, which have not been collected by the sheriff or other officer on order of execution."

In said opinion it was further stated:

" * * * Barring the specific exceptions, the language of the provision under consideration comprehends all money received and disbursed by the clerk in pursuance of an order of court or on judgments, so that unless payments of alimony come within such specific exceptions, they would be within the requirement of this provision for the collection of the commission prescribed.

Alimony is clearly not within the exception of fees and costs and, therefore, when not collected by the sheriff or other proper officer on order of execution, but paid pursuant to an order or on a judgment of court to the clerk in the discharge of such order or judgment for distribution by the clerk, such payments seem to come clearly within the requirements that the clerk shall charge and collect the prescribed commission, to be taxed against the party charged with the payment of such money. I am therefore of opinion that your first inquiry must be answered in the affirmative, and that it is the duty of clerks of courts to charge and collect the commission prescribed in that part of section 2901, G.C., above quoted, upon all receipts of alimony ordered by the court to be paid to such clerk and by him disbursed."

The language of section 2901, General Code, which was under consideration in the above opinion has undergone no change since said date, and I therefore see no reason for disagreeing with the conclusion above reached.

You next inquire whether the Clerk may refuse to accept these payments if the commission to be charged is not included. I must answer this question in the negative. A county Clerk of Courts is an administrative officer, and in the performance of his official duties must act in accordance with the provisions of law and the orders of the Court. See Opinions of the Attorney General for 1927, Vol. I, page 689. Section 2899, General Code, reads as follows:

"The clerk of each of the courts shall exercise the duties conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court."

In view of the above, I am constrained to hold that, if a court orders alimony and support payments to be made to the Clerk and by him to be disbursed, he may not refuse to accept these payments.

You further inquire as to the procedure to be followed by the Clerk to escape any liability to the county or from having a finding made

against him by the State Examiner, for not collecting such commission.

In regard thereto, your attention is directed to sections 2978 and 2979, General Code, which read as follows:

Section 2978.

"Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder, shall charge and collect the fees, costs, percentages, allowances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices."

Section 2979.

"On or before January 15th annually, each of said officers shall file with the prosecuting attorney of his county, a report in writing showing the amount of fees, percentages, penalties, allowances and other perquisites due his office from each person or corporation which has remained due and unpaid for more than one year prior to January 1st, next preceding, and it shall be the duty of the prosecuting attorney to immediately proceed to collect the same by any of the means provided by law, and to pay the amount so collected into the county treasury to the credit of the general county fund. The county auditor shall not issue his warrant to either of said officers for his salary for the month of January in any year, until said report has been filed with the prosecuting attorney as herein required."

From the above, it would appear that, if the Clerk of Courts taxes the commissions in question against the person charged with the payment of the money and such commissions are not paid, the clerk by complying with the above requirements will incur no liability to the county.

Summarizing my conclusions herein, it is therefore my opinion that:

1. Clerks of Courts are required to accept all payments for the support of children or as alimony, when ordered by the court, and in connection therewith are required to charge and collect from the persons making such payments, a commission of one percentum on the first one thousand dollars and one-fourth of one percentum on all sums exceeding one thousand dollars.
2. If such commissions are not paid, it is the duty of Clerks of Courts to make a report thereof to the prosecuting attorney in accordance with the provisions of section 2979 of the General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.