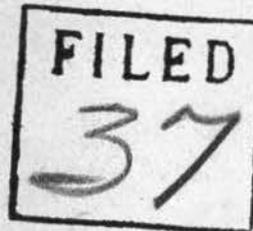


May 17, 1950

5/18/50



Honorable Lane Harlan  
Prosecuting Attorney  
Cooper County  
Boonville, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The deputy county clerk of Cooper County is receiving a monthly salary of \$150. Cooper County is a third class county and has a population between 15,000 and 20,000. At present the deputy clerk does not receive 70% of the salary of the county clerk.

"The question is whether the sum of 70% of the salary of the county clerk is to be mandatory, or whether the county clerk has the authority to set the salary with the approval of the County Court, or whether the county court can set the salary without recommendation of the county clerk."

Section 5, Laws of Missouri, 1947, Volume I, page 491, provides:

"The clerk of the county court in each county of the third class shall be entitled to employ deputies and assistants, and for such deputies and assistants shall be allowed the following sums: In all counties having a population of less than 7,500 persons the sum of 55 per cent of the salary of the county clerk as established in Sections 1 and 2 of this act; in counties with a population of 7,500 and less than 15,000 the sum of 65 per cent of the salary of the county clerk; in counties having a population of 15,000 and less than 20,000, the sum of 70 per

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cent of the salary of the county clerk; in counties having a population of 20,000 and less than 24,000, the sum of 75 per cent of the salary of the county clerk; in counties having a population of 24,000 and less than 30,000, the sum of 100 per cent of the salary of the county clerk; and in counties having a population of 30,000 or more, the sum of 125 per cent of the salary of the county clerk; provided, that the total allowance for deputies and assistants shall in no case exceed the sum of \$4,000 annually. The county court in all counties of the third class may allow the county clerk, in addition to the amount herein specified for deputies' or assistants' hire, a further sum not to exceed \$500 per annum, to be used solely for clerical hire or allowed and paid, in whole or in part, as additional compensation to any regular deputy or assistant to be determined by the county court of such county; provided, that the county court shall determine that the work required to be done by such clerk or clerks demands or requires such extra remuneration."

In the case of Alexander v. Stoddard County, 210 S.W. (2d) 107, at 1. c. 109, the Supreme Court quoted with approval from 20 C.J.S., Counties, Section 122, as follows:

"As a general rule compensation for services rendered by assistants, deputies, and other employees can be allowed directly to them or to their superiors only as authorized by law; and where no provision is made for the payment, or for the appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement. \* \* \*"

In the present situation the Legislature has seen fit to provide for reimbursement of the county clerk for deputy and clerical hire. You will note that the statute provides that the sums fixed

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"be allowed" to the county clerk for deputies and assistants. Inasmuch as the allowance is in the form of reimbursement, we feel that the Legislature has left to the county clerk the determination of what shall be paid to the deputies and assistants. The county clerk is entitled to be reimbursed within the limits prescribed in the above quoted statutory provision for his actual outlay for the hire of such help. In view of the fact that the allowance is to the county clerk in the form of reimbursement, we feel that the salary of the deputy may be fixed by the county clerk without approval by the county court. Furthermore, we do not feel that the county court would be authorized to fix the salary of the deputy, nor must the salary of the deputy in your county be fixed at 70 per cent of the salary of the county clerk. This is a matter for the determination of the county clerk, and the 70 per cent figure merely limits the amount which may be allowed to the county clerk as reimbursement. If he does not see fit to pay the deputy an amount equal to 70 per cent of his salary, his reimbursement would, of course, be limited to the amount actually paid. On the other hand the county clerk might, if he sees fit, pay the deputy more than 70 per cent of his salary, but in such event, his reimbursement would be limited to the 70 per cent.

CONCLUSION

Therefore, it is the opinion of this department that the salary of deputy county clerks in third class counties is determined by the county clerk who is reimbursed for his expenditure in accordance with Section 5 of Laws of Missouri, 1947, Volume I, page 491.

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

RRW/feh