

CIRCUIT CLERKS:  
DEPUTIES:  
THIRD CLASS COUNTIES:

(a) County Courts should continue to pay the salary of the duly elected, acting, and qualified circuit clerk, while clerk is in army; (b) County courts cannot deduct from the salary paid to a deputy circuit clerk; (c) County courts cannot deduct from the salary of the circuit clerk an increase in salary for a deputy, which increase was ordered by the circuit judge.

August 14, 1951

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Honorable Robert A. Dempster  
Prosecuting Attorney of Scott County  
Sikeston, Missouri



Dear Sir:

Your recent request for an official opinion has been assigned to me to answer. You thus state your opinion request:

"At the request of the County Court, I desire to submit to you herewith a statement of facts for your opinion concerning the questions raised herein.

"At the last election Lloyd G. Briggs was elected Circuit Clerk. Shortly after taking office, he was drafted and he is now in the army, under selective service. By reason of his absence, an additional deputy clerk was employed by the County Court and the additional salary set up in the County budget in February was \$150.00 per month. Briggs draws his full salary under the statute. He spends no time in the office and makes no contributions to the salary of either deputy. The office has such a volume of work that it requires two full time workers. Recently the Circuit Judge directed the County Court to raise the salary of one of the Deputy Clerks, an additional \$21.00 per month which would exceed the amount set up the budget by that sum.

"Several questions present themselves. (1) Shall the County Court continue to pay the duly elected, acting, and qualified Circuit Clerk since he is now in the army and performs none of the functions of the office?

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(2) If the Circuit Clerk is entitled to the salary of the office, can the County Court deduct therefrom the salary to be paid an additional deputy caused by his absence from the office? (3) Can the County Court deduct from the Circuit Clerk's salary the amount ordered to be paid in excess of the budget to pay the additional deputy clerk? In other words, the \$21.00 ordered to be paid, is in excess of the amount requested, approved, and fixed in the County budget for deputy clerk hire, so can that sum be deducted from the Circuit Clerk's salary?

"In view of the fact that the salaries are being held up pending your opinion, your earliest consideration of this matter would be greatly appreciated."

We will consider the questions which you ask, in the order in which you asked them.

1. It is well settled in Missouri law that a public officer does not forfeit his office by reason of being drafted into military service. In the case of *State ex inf. McKittrick, Attorney General, vs. Wilson* 166 S.W. 2d 499, the situation was that one Wall had been elected circuit clerk of Henry County, Missouri, and had entered upon the duties of his office. Subsequently, he was drafted into military service. Some time later, the Governor of Missouri appointed one Wilson to the office of circuit clerk of Henry County "to fill the vacancy in the office." The Attorney General then filed a quo warranto proceeding to determine the right of Wilson to hold this office. In the above styled case, the Missouri Supreme Court entered a judgment of ouster against Wilson. In the course of its opinion, the Court stated, l.c. 500, 501:

"The question for decision is whether Wall's induction into the army under the Selective Service Act resulting in his inability personally to perform the duties of his office caused him automatically to forfeit his office.

"It is our judgment that Wall did not forfeit his office by being drafted into the military service of his country. This would be equally true if he had volunteered for the duration, particularly in view of our universal military service."

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In the above case the Court held only that Wall did not forfeit his office by reason of being inducted into military service. The Court said nothing in regard to whether he should be paid his salary. However, there is a line of Missouri cases which hold that the holder of a public office is entitled to the compensation attached to such office. In the case of *Coleman v. Kansas City, Mo.*, 173 S.W. 2d 572, 1.c. 577, the Court said, in part:

"It may be that his holding the position as State Administrator of the W. P. A. was grounds for his removal (a question we do not decide), yet the fact remains that he did continue to hold the office of Director of Public Works and discharged all duties as such in a manner satisfactory to the appellant, and, of course, all his official acts during that time were legal. *State ex rel. City of Jefferson v. Hackman*, 287 Mo. 156, 229 S.W. 1082.

"During the time Murray held the office, he is entitled to the salary fixed by law as an incident to that office. 'Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.' *State ex rel. Evans v. Gordon*, 245 Mo. 12, loc. cit. 27, 149 S.W. 638, loc. cit. 741. Also, see *State ex rel. Chapman v. Walbridge*, 153 Mo. 194, 54 S.W. 447. *State ex rel. Vail v. Clark*, 52 Mo. 508."

Hence, the answer to your first question is that the county court of Scott County should continue to pay the duly elected, acting and qualified circuit clerk of Scott County, the regular amount of compensation which goes with that office.

2. Your second question is: "If the circuit clerk is entitled to the salary of the office, can the County Court deduct therefrom the salary to be paid an additional deputy caused by his absence from the office?"

The circuit clerk would not be liable for the salary of such deputy in view of Section 483.350, RSMo 1949, which states:

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"All annual salaries provided in sections 483.330 to 483.345, shall be paid out of the county treasury in monthly installments at the end of each month by warrant drawn by the county court upon the county treasury."

The status of the deputy circuit clerk would be the same as if the circuit clerk were in the office. Hence, the answer to your second question is that the county court cannot deduct the salary of the second deputy from the salary of the circuit clerk.

3. Your third question is: "Can the county court deduct from the circuit clerk's salary the amount ordered to be paid in excess of the budget to pay the additional deputy clerk? In other words, the \$21.00 ordered to be paid, is in excess of the amount requested, approved and fixed in the county budget for deputy clerk hire, so can that sum be deducted from the circuit clerk's salary?"

We do not feel that it is necessary, in order to answer your question, to go into the matter of whether the circuit judge had the power to increase the salary of the deputy, in excess of the amount fixed in the county budget. We do believe, in the light of Sections 483.345 and 483.350, both quoted above, this sum of \$21.00 per month could not be deducted from the salary of the circuit clerk.

#### CONCLUSION

It is the opinion of this department that: (a) The county court of Scott County should continue to pay the salary of the duly elected, acting, and qualified circuit clerk; (b) The county court of Scott County cannot deduct from the salary of the circuit clerk the salary paid to a deputy circuit clerk; and (c) The county court of Scott County cannot deduct from the salary of the circuit clerk an increase in salary for a deputy which increase was ordered by the circuit judge.

Respectfully submitted,

HUGH P. WILLIAMSON  
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APPROVED:

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