

CIRCUIT CLERK'S SALARY - Section 11786 R. S. No. 1929.

March 23, 1933.

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Hon. Geo. F. Addison
Prosecuting Attorney
Bent County
Salem, Missouri

Dear Mr. Addison:

Your recent request to the Attorney-General for an opinion relative to salaries of Circuit Clerks has been handed the undersigned for attention. In connection with your request you state the following:

"Mr. W. H. Welch, our Circuit Clerk, just now presented your letter of the 10th. inst. to me and requested me to write you for the opinion he desired relative to salaries of Circuit Clerks. Please render this opinion.

"As you know, of course, Sec. 11786, R. S. 1929 has previously ruled on as the section governing salaries of Circuit Clerks. It recites that Circuit Clerk's salaries are determined by multiplying the total number of votes cast at the last preceding presidential election by five. The total vote cast in this county last Nov. 8th. was 8017 which when multiplied by five gives this county under said sec. 11786 a population of 25,085, which also under said sec. 11786 would make the Circuit Clerks salary \$2000.00 a year.

"Mr. Welch informs me that the county court refuses to pay him at the rate of \$2000.00 a year but continue to pay him at the rate of \$1900.00.

"Mr. Welch also informed me that he had read in the papers several times where Circuit Clerks all over the state are getting a vantage of this increase."

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Section 11786, R. S. No. 1929, is the provision under which the circuit clerk's salary is to be ascertained. It provides that he should be paid on the basis of five times the vote of the last presidential election. We construe the "highest vote at the last presidential election", to mean the highest vote cast for any office at that election.

We are of the further opinion that, if from a calculation of the vote as above indicated cast at the November election 1932, it should result in an increase of the population and thereby an increase in the salary, the circuit clerk is entitled to such increased salary and should be paid on the new basis.

The county court, no doubt, has in mind the constitutional inhibition against the increase in salary during the tenure of office. In this connection, we call your attention to the case of State ex rel Harvey v. Linville, 300 S. W. 1066, wherein the court holds,

"Increase of officer's salary, which statute in force at time of his election permits, after election showing an increase in population, does not violate Constitution as increasing salary during officer's term of office since salary is fixed by law which permits ascertainment of amount of salary at subsequent periods."

We hope the above and foregoing satisfactorily answers your inquiry. In the event, however, you desire additional information upon the subject, we shall be pleased to go into the matter further.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

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