

CIRCUIT CLERK:

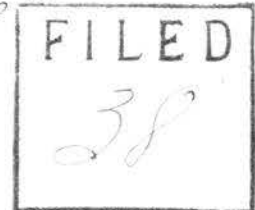
Salary of Circuit Clerk, Section 11786,
R. S. Mo. 1929.

COUNTY CLERK:

Salary of County Clerk, Section 11811,
R. S. Mo. 1929.

June 16, 1933.

Mr. T. J. Harper,
Prosecuting Attorney,
Galena, Missouri.



Dear Sir:

We are acknowledging receipt of your inquiry of June 1, 1933, in which you inquire as follows:

"Thanks for your opinion in answer to my last inquiry with relation to salaries of the County Clerk, and Circuit Clerk of this County.

There is quite a controversy here over the matter, and I would like to further bother you with another proposition and what is,

First. It seems that the laws of 1921 were held unconstitutional in the 312 Mo. supra, page 157, as not being uniform for salaries of County officers, and that section 11786 R. S. 1929 is the law, which allows the vote to be multiplied by 5 to determine the basis of the salary of Circuit Clerks. Section 11811 is, therefore, the same section as in the 1921 act and was declared unconstitutional as above referred to in said 312 report; so does not the laws in force before that time become operative to-wit; section, 11019 R. S. 1919?

Awaiting your further opinion on this one question."

The Supreme Court of Missouri in the case of State ex rel Chaney v. Crinstead, 314 Mo. 55, and again in State ex reb O'Connor v. Reidel, 46 S. W. (2d), 131, holds that section 12, article 9 of the Missouri Constitution which provides:

"The General Assembly shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population."

It is not violated so long as the method of calculating the population is uniform as to all counties and as to each class of officers.

The court in the Crinstead case above on page 68 of

the opinion says,

"The law-makers can adopt any measure not prohibited by the Constitution; our Constitution being one of limitations, rather than one of grants. It cannot be said that an estimated population, where the same basis of estimate is used in all counties, would render the law bad because of lack of uniformity as to the several classes, or as to all classes."

It would thus appear from each of the above cases that each county officer may be considered as constituting a single class and so long as the basis for determining the population for that class or office is uniform throughout the several counties of the State, then such Statute would be Constitutional and valid. While the salaries of the Prosecuting Attorneys were involved in the two above cases, the conclusion of law reached therein affects all County Officers, including the Clerk of the Circuit Court and the Clerk of the County Court.

Section 11808 R. S. Mo. 1929, provides a method for ascertaining the population of counties for the purpose of fixing the salaries of County Officers, but being a general Statute, it should be resorted to only where no other method has been provided by the Legislature to ascertain the population of counties for the purpose of fixing the salary of a particular county official.

It is, therefore, the opinion of this Department that the proper way of ascertaining the population and thereby fixing the salaries of the officials of which you make inquiry is as follows:

Clerk of the Circuit Court should be paid on the basis of five times the vote of the last presidential election, as is provided in Section 11783 R. S. Mo. 1929.

Clerk of the County Court should be paid on the basis of three and one-half times the vote of the last presidential election, as provided in Section 11811 R. S. Mo. 1929.

The salary of the Circuit Clerk and the County Clerk, as ascertained from a calculation of the vote in the presidential election of 1932, would become effective January 1, 1933.

"The highest vote of the last presidential election" means the highest vote cast for any office in that election. If, from calculation of the votes as above described, it should result in an increase of salary, such increase during the term of said official, under authority of State ex re~~h~~ Harvey v. Linville, 300 S. W. 1066, would not be in violation of Section 8, article 14 of the Constitution of Missouri.

Mr. T. J. Harper,

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June 16, 1933.

You state in your inquiry that Section 11811 R. S. Mo. 1929, as amended in 1921 was declared unconstitutional. We believe, however, that you are in error in this respect. Section 10995 R. S. Mo. 1919, was amended in Laws of 1921, page 606. In State v. Hamilton, 279 S. W. 233, the court held that that amendment was void and held that the salary of the Circuit Clerk was to be fixed under Section 10995 R. S. Mo. 1919, which is Section 11786 R. S. Mo. 1929.

Section 11019 R. S. Mo. 1919, was amended in Laws of Missouri, 1921, page 608, and that amendment has not been declared unconstitutional. Section 11019, as amended in 1921, now appears as Section 11811 R. S. Mo. 1929.

From the foregoing it is, therefore, the opinion of this Department that the salary of the Circuit Clerk shall be determined according to Section 11786 R. S. Mo. 1929, and the salary of the Clerk of the County Court shall be determined according to Section 11811 R. S. Mo. 1929.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.

FWM:S