

CIRCUIT CLERK -- SALARY -- Section 11786, R.S. Mo. 1929.
COUNTY CLERK --- SALARY -- Section 11811, R.S. Mo. 1929.
COUNTY SUPERINTENDENT OF SCHOOLS -- SALARY -- Section 9465, R.S. Mo. 1929.

January 26, 1933

Hon. Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Sir:

Your letter of January 10, 1933 addressed to the Attorney General has been handed to the undersigned for attention. In your letter, you make the following request:

"I would like to have your opinion as to the salaries of the circuit clerk, county clerk and the county superintendent of schools."

Our Supreme Court in the case of State ex rel Chaney v. Grinstead, 314 Mo. 55, and again in State ex rel O'Connor v. Riedel et al, 46 S.W.(2d) 131, holds, as we construe the opinion, 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."

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 first mentioned case, in the course of the opinion, saying on page 68:

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

It would thus appear from each of the above quoted 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 cases hereinabove cited are dealing with the office and officers not contained in your inquiry, the conclusion of law reached therein, does effect all county officers, including clerk of the circuit court, clerk of the county court, and superintendent of public schools.

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Section 11808, R.S. Mo. 1929, provides a method for ascertaining the population of counties for the purpose of fixing the salary 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 salary of the officials of which you make inquiry, are as follows:

The 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 11786, R.S. Mo. 1929.

The clerk of the county court should be paid on a basis of three and one-half times the vote of the last presidential election, as provided in Section 11811, R.S. Mo. 1929.

The county superintendent of schools should be paid on the basis of three and one-half times the vote of the last presidential election as provided in Section 9465, R.S. Mo. 1929.

The salary of the circuit clerk and county clerk as ascertained from a calculation of the vote in the presidential election of 1932 would become effective January 1, 1933.

The school superintendent, being elected in April for a term of four years, beginning on July 1, 1931, the 1932 vote would not become effective as to his salary until July 1, 1933, the end of a year of his employment, according to our interpretation of the Court's opinion in the case of State ex rel Harvey v. Linville, et al, 300 S.W. 1066.

It is the further opinion of this department that "highest vote at the last presidential election", means the highest vote cast for any office at that election. If from a calculation of the vote as above indicated, it should result in an increase of salary. Such increase, during the term of said official, under the authority of State ex rel Harvey v. Linville, supra, would not be violative of Section 8, Article 14 of the Constitution of Missouri.

Yours very truly,

CCA:ER

CARL C. ABINGTON
Assistant Attorney-General

Approved:

ROY McKITTRICK
Attorney General