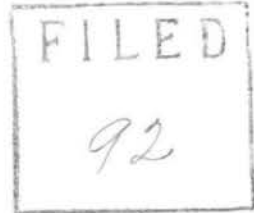


County Clerk's deputy hire - Sec 11811  
Counties over 7 thousand and less than 40 thousand

Op 2/11 R ✓

February 7th, 1933



Hon. C. P. Turley,  
Prosecuting Attorney,  
Van Buren, Missouri.

Dear Sir:

We have your request for an opinion, under date of January 28th, concerning the amount of salary which may be allowed county clerks for deputy hire under Section 11811, R.S. Mo. 1929, in which you state the following facts:

" According to the election of 1928, the population of Carter County was less than 7,000, which put the office of County Clerk on fee basis. According to the election of 1932, the population of Carter County is more than 7,000 and less than 15,000, which puts the office of County Clerk back on a salary basis.

The question is: When does the change from fees to salary go into effect? The date of the election? The end of the year 1932? Or the end of the Clerk's term in 1934?

Now, assuming that county clerk is on a salary basis, the question arises; is he entitled under the law to a deputy as a matter of right and course, or is the appointment conditional on the County Court's finding and determination that the work in the Clerk's office requires a deputy. I refer of course to the first deputy, not the additional help or deputy. In column two, page 5171, sec. 11811, R. S. Mo. 1929, there are two provisos, and I am not sure whether the second one is a limitation of the first only, or on the matter preceding the first proviso. "

The population of Carter County with reference to the amount to be allowed the County Clerk as fees should be estimated upon the election of 1932. Insofar as the increase in population would affect the fees which he would be entitled to receive, it would become operative on the first day of January, 1933.

2/7/33

In the case of *Hate ex rel Harvey v. Linville*, 300 S.W. 366, the court says:

"The increase of salary which a statute permits after an election showing an increase in population is not in violation of the constitution in that the salary is increased during the term for which the officer was elected, because the law in force at the time of his election fixed a salary to be estimated at periods as changed by increase in the population."

The constitutional provision referred to in this opinion, Section 8, Article XIV, does not place an inhibition upon a decrease in salary or fees during term of office. The court in further considering a statutory provision in the *Linville* case, *supra*, pertaining to annual salary says:

"Annual salary as used in said Section 10938 means salary for each year of his incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that 'annual' as applied to salaries means not the calendar years but the years of the incumbent's term, which in case of relator begins on the first day of April each year."

The term of the officer of which you inquire begins on the first of the year following his election, and the first year of his service would end on December 31st.

The second subdivision of your inquiry has to do with the right to employ a deputy or assistant clerk. Section 11811, R. S. 1929, among other things provides that in counties containing fifteen thousand inhabitants or less, the clerks shall be permitted to retain \$1250.00 for themselves, and be allowed to pay for deputies or assistants not exceeding \$600.00; provided that the county court in all counties of this state having a population of seven thousand and less than forty thousand may allow the county clerk and circuit clerk of such counties, or either of them, to retain in addition to the amount now allowed them for deputy or assistant hire, a further sum not to exceed five hundred dollars per annum 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

Hon. C.P. Turley-3

2/7/33

such clerk or clerks demand or require such extra remuneration, and that the fees collected and taken in by such clerk are sufficient to pay the same, but in no event shall such allowance be made by the county court where the fees collected by such clerk or clerks are not absolutely sufficient to meet such demand.

Under our interpretation of this statute, the county clerk is entitled to the first deputy referred to as a matter of right, and the county court would be without authority to restrict him with reference to such deputy. The second provision, however, is a matter to be determined wholly by the county court and unless in the judgment of the court the duties of his office would require an additional assistant, the clerk would be without authority to employ such assistant and pay for his services out of county funds.

Very truly yours,

Carl C. Abington,  
Assistant Attorney-General

CCA/N