CIRCUIT CLERKS - Compensation beginning in 1935 - Pay of Deputies, and constitutional question of Laws 1933, p. 369.

March 7th, 1934.

3-9

FILED

Hon. Birt P. Bryant
Clerk of Circuit Court
Dunklin County
Kennett, Missouri

Dear Sir:

This acknowledges receipt of your request for an opinion upon the following query:

> "Replying to your letter under date of December 2nd in which you enclosed copy of opinion on salary of circuit clerks and deputies affected by Sections 11786 and 11812, p. 369, Laws 1933, addressed to Hon. Dale H. Johnson, Circuit Clerk of Bollinger County, Marble Hill, Missouri, but this opinion does not touch upon the proposition which I made inquiry as to your opinion, to-wit: (1) After the present term of the Circuit Clerk's office expires, will the salary be on a fee basis altogether? (2) If on fee basis, will the county be liable for the difference in salaries if the collection of fees are insufficient to pay the salary of the clerk and his deputies?"

I.

AFTER THE CIRCUIT CLERK'S PRESENT TERM OF OFFICE EXPIRES, THE CIRCUIT CLERK WILL BE PAID UPON A FEE BASIS.

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At the present time, the circuit clerk is paid a salary under the provisions of Sections 11786 and 11813 R. S. Mo. 1929. The salary provided for now will be paid until the end of the term of office of the present circuit clerks. After the election of circuit clerks this year, they will assume their duties on the first Monday in January, 1935. - Section 11664 R. S. Mo. 1929. The circuit clerks in all counties of this state taking office on the first Monday in January, 1935, will receive compensation for their services as set out in the new section, 11786, Laws 1933, p. 369, and which is as follows:

> "The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. In counties having a population of less than 7,500 persons, the sum of $1000.00; in counties having a population of 7,500 and less than 10,000 persons, the sum of $1100.00; in counties having a population of 10,000 and less than 12,500 persons, the sum of $1300.00; in counties having a population of 12,500 and less than 15,000 persons, the sum of $1500.00; in counties having a population of 15,000 and less than 17,500 persons, the sum of $1700.00; in counties having a population of 17,500 and less than 20,000 persons, the sum of $1900.00; in counties having a population of 20,000 and less than 25,000 persons, the sum of $2100,00; in counties having a population of 25,000 and less than 30,000 persons, the sum of $2300.00; in counties having a population of 30,000 and less than 70,000 persons, the sum of $2500.00; in counties having

> a population of 70,000 and less than 80,000 persons, the sum of $3000.00; provided, that in any county wherein the clerk of the Circuit Court is ex-officio recorder of deeds, said offices shall be considered as one for the purpose of this section; provided, further, that clerks of the Circuit Court shall be allowed to retain, in addition to the fees allowed under this section, all fees earned by them in cases of change of venue from other counties; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

You will note that the above section provides a maximum of fees that any circuit clerk may retain for one year's services. This means that the circuit clerk is entitled to retain fees up to the maximum amount allowed in this section. Fees earned in change of venue cases are not to be accounted for by the circuit clerk.

The language at the very beginning of the new section, 11786, refers to "the aggregate amount of fees" that a circuit clerk may retain for one year's service. The clear meaning of this language is that out of the fees collected by the circuit clerk in his official capacity, he shall be allowed to withhold or retain from the money in his custody and possession all of it up to a certain amount, and none over that amount, as set out in the new section 11786. If his office does not earn the maximum amount allowed him by law, then he has no funds in his hands out of which he can retain the maximum amount allowed him by law. The Legislature clearly intended to pay the circuit clerk upon a fee basis, and by its repeal of Section 11815, and the failure to enact a new section in lieu thereof, the Legislature made it clear that after the present term of office expires the circuit

clerk should receive no compensation from the county treasury for his services.

It is, therefore, the opinion of this office that after the expiration of the present term of office of the circuit clerk, he shall receive fees for his compensation not to exceed the amounts set out in Laws 1933, p. 369; which fees shall be in lieu of the salary heretofore paid the circuit clerk.

II.

DEPUTY CIRCUIT CLERKS.

Prior to the passage of the new Section 11812, Laws 1933, p. 371, each clerk of the circuit court was entitled to deputy circuit clerks who were appointed by the circuit clerk with the approval of the Circuit Court. The Circuit Court fixed the compensation of such deputy circuit clerks.- Section 11812 R. S. Mo. 1929. Under this old section, the right of the deputy circuit clerk to compensation was thus fixed by statute and became a county charge. Section 11813 R. S. Mo. 1929, now repealed, added nothing to the liability of the county to pay the deputy circuit clerk's salary except that it specified that it would be paid in monthly installments. The duty rested upon the County Court to pay the deputy circuit clerks without any aid from Section 11813, R. S. Mo. 1929.

The 1933 Legislature repealed Section 11812, supra, and enacted in lieu thereof a new section found in Laws 1933, p. 371. This new section provides:

> "Every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the county court, as such court shall deem necessary for the prompt and proper discharge of the duties of his office.

> The County Court, in its order permitting the clerk to appoint a deputy or assistant, shall fix the compensation of such deputy or assistant which, in counties having 12,500 persons and less, shall not exceed the amount allowed deputy or assistant to the county clerk for the actual time employed and shall designate the period of time such deputy or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it."

It will be noted that the principle, which, in the new section, was that it substituted the term "county court" for the term "circuit court" used in the old section, thus transferred to the county court the duties formerly imposed upon the circuit court. No change was made in the law effecting the county's liability for the compensation of deputy circuit clerks. Under the old section, the county was liable for the compensation of deputy circuit clerks, and the amount of that compensation was to be fixed by the circuit court. Under the new law, the county is liable for the compensation of deputy circuit clerks, but the amount of that compensation "is fixed by the county court".

It will be noted from close reading of the entire Act of 1933, pp. 369-372, that the only moneys or fees that the circuit clerk is permitted to <u>retain</u> are the fees for his own personal services. He retains no fees for the pay of deputies and assistants. Therefore, under the provisions of Section 11814, Laws 1933, p. 372

it is made the duty of the circuit clerk to pay into the county treasury quarterly all fees collected in excess of the sums he is permitted to retain.

It is, therefore, the opinion of this office that the county court shall fix the compensation of deputy circuit clerks, and that the county court shall pay such deputy circuit clerks from the general revenue fund of the county. Such pay shall be compensation for the services rendered by a deputy circuit clerk and shall be entitled to be classified as such under the County Budget Law.

III.

COUNTIES WHEREIN THE CIRCUIT CLERK WILL BE EX-OFFICIO RECORDER OF DEEDS.

Section 11528, Laws 1933, p. 360, combines the office of the circuit clerk and recorder of deeds in all counties of less than 20,000 inhabitants. This office entertains some doubt as to the constitutionality of that part of the new law, Laws 1933, pp. 369-372, insofar as it may apply to counties of less than 20,000 inhabitants. The constitutionality of this statute is properly for the courts. We merely set forth the history of this Act for whatever it may be worth, and do not attempt in this opinion to pass upon the constitutionality of the Act.

The 1933 statute, Laws 1933, p. 369, in its title, provides:

> "AN ACT to repeal Sections 11786, 11808 11811, 11812, 11813, 11814 and 11815 of Article 2, Chapter 84, of the Revised Statutes of Missouri, 1929, entitled "Fees, Payment, and Disposition of," and to enact five new sections relating and pertaining to the same subject to be known as Sections 11786, 11808, 11811, 11812, and 11814."

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We call your attention to the term "same subject", used in the title of the 1933 Act.

Section 11786 R. S. Mo. 1929 originates with Laws 1915, p. 578. The title of the 1915 Act provides:

> "AN ACT changing the method of payment of salaries of clerks of circuit courts, except in any county wherein the clerk of the circuit court is ex officio recorder of deeds of said county; and provided further that the provisions of this act shall not apply to any county which now contains or may hereafter contain a city of 75,000 inhabitants or more, or to any county which now contains or may hereafter contain eighty thousand inhabitants and less than one hundred and fifty thousand inhabitants in which circuit court is held, in two or more places in said county, providing for the appointment and payment of deputies, and requiring clerks to pay into the county treasury all fees collected by them."

SECTION	SECTION
1. Salaries of circuit clerks in certain counties.	4. Duty of clerk - collection of fees-statement, etc.
2. Deputies and assistants, how appointed-compensation.	5. Repealing clause.
3. Salaries, how paid.	6. Act to take effect, when."

It will be noted that the 1915 title related to the method of paying circuit clerks EXCEPT <u>in any county wherein the clerk of the circuit court is ex-officio recorder of deeds</u>. Therefore, the Act, by its title, did not cover the salary of circuit clerks in

counties where they were also recorder of deeds.

The Legislators, in 1919, pp. 663-664, attempted to independently amend the 1915 Act by passing two separate and distinct amendments to this Act. Both amendments were approved May 30, 1919. The title of the amendment act, Laws 1919, p. 663, specifically refers to the fact that the 1915 Act did not apply to circuit clerks who were ex-officio recorders of deeds. The amendment further, at page 665 of the 1919 Act, reads:

> "AN ACT to amend section one of an act entitled "An act changing the method of salaries of clerks of circuit courts, session acts, 1915, page 378, approved March 22, 1915.
>
> | SECTION. | SECTION. |
> | --- | --- |
> | 1. Amending an act of 1915 relating to salaries. | 1. Salaries of circuit clerks in certain counties. |
> | | 2. Repealing clause." |

It will be noted that the 1919 Act, p. 665, is silent in the title as to including circuit clerks who are ex-officio recorders of deeds, but the 1919 revision committee entirely omitted the 1919 law, p. 663, but copied into the revision of 1919 the act as amended at p. 665. This section became 10995 R. S. Mo. 1919.

The 1919 amendment, supra, did not contain a general title. It adopted the 1915 Act and the 1915 title. Since the 1915 title did not apply to circuit clerks who were ex-officio recorders of deeds, any amendment of the statute contrary to the title so as to apply to circuit clerks who were ex-officio recorders of deeds would be invalid, because neither the amended act nor the amendatory act in the title applied to circuit clerks who were ex-officio recorders of deeds. State ex rel. v. Hackman, 267 S. W. 608 (1924).

It is now well settled that where the title refers to a specific class, the Act, and all amendments thereto which adopt the

original title of the act are limited to the classes therein covered. In State v. Sloan, 258 Mo. 305 (1914), the title of an act referred to "herding cattle by non-residents", while the amendatory act applied to residents as well as non-residents. No part of the original title was changed in the title to the amendatory act. The court, l. c. 313, said:

> "The purpose of a title is to serve as a clear and comprehensive indicator of the purport of the act. While it may be so general in its terms as to omit reference to or the expression of matters germane to the principal features of the statute, if it sufficiently indicates the substantial purpose of the law, it will not be violative of the Constitution; but where a title descends to particulars and specifies a certain class included within the provisions of the act, to the exclusion of others, it does not sufficiently indicate the purport of the law, and is to that extent violative of the constitutional provision.
>
> We find, therefore, in the case at bar that the body of the act contains provisions applying to residents as well as non-residents of the State, while its title, as definitely as words can convey their meaning limits its application to non-residents; under this state of facts, much as the court may be disinclined to declare the act invalid, it cannot in the face of the plain provisions of the Constitution (Sec. 28, art. 4) do otherwise in so far as it is attempted to apply the act to residents of this State."

It would therefore appear that as one section contained the provisions and regulations for fees of all circuit clerks in

the state who were not ex-officio recorders of deeds, then the attempted amendment of the 1915 Act thereafter so as to take in an additional class, or to add an additional subject without setting it out in the title, might contravene Section 28, Article 4 of the Missouri Constitution.

The 1915 statute has heretofore been construed as not violating Section 28, Article 4, of the Missouri Constitution, but the question of class was not raised. The objection at that time was made on the question of salaries and fees. State ex rel. v. Farmer, 271 Mo. 306 (1917).

The 1915 Act, p. 378, contained four principle sections, Section 1, now Section 11786; Section 2, now 11812; Section 3, now 11813; Section 4, now 11814. These four sections were referred to in the title as "An Act", and in Section 1, provided,

> "provided, that the provisions of this act shall not apply to any county wherein the clerk of the circuit court is ex-officio recorder of deeds of said county,"

The above quotation was a part of the Act containing the four sections above enumerated.

It would therefore appear that Section 11786, Laws 1933, p. 369, would only provide for the compensation of circuit clerks who were not ex-officio recorders of deeds.

An attempt was made to amend this section, Laws 1921, p. 607, but the amendment was held unconstitutional. - State ex rel. v. Hamilton, 303 Mo. 302; 260 S. W. 466.

Section 11528, Laws 1933, p. 360, combines the office of the circuit clerk and recorder in all counties with a population of less than 20,000.

When considering the two sections together, it would therefore appear that the circuit clerks of Missouri, beginning in 1935, in counties of less than 20,000 population, would be ex-officio recorders of deeds, and that they will receive compensation from fees.

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While it is not the duty of this office to determine close questions of the constitutionality of Legislative Acts, we have set out the above and foregoing history of the Act for the consideration of those who might wish to present the matter to a court of record for final determination.

Respectfully submitted,

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