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CIRCUIT CLERK: Compensation at present time - up to Jan. 1, 1935.

11-4
October 25, 1934.



Hon. Wm. A. Dollarhide,
Prosecuting Attorney,
Hickory County,
Hermitage, Missouri.

Dear Sir:

This department is in receipt of your letter of September 14, 1934 wherein you request an opinion as to the salary of the Circuit Clerk and Recorder of Deeds, as follows:

"The population of Hickory County according to the 1930 census is 6430. Will you please advise what salary our Circuit Clerk and Recorder should be paid?

This inquiry is made at the request of this officer and our county court."

We assume that the Circuit Clerk acts as Ex-officio Recorder of Deeds and that both offices are filled by one and the same party. We cannot determine from your letter as to whether you are inquiring as to the salary of the Circuit Clerk and Recorder at the present time, or as to the amount of salary the Circuit Clerk and Recorder will receive after January 1, 1935. If your request relates to the salary after January 1, 1935, we are enclosing herewith copy of opinion rendered to the Hon. Birt F. Bryant, Clerk of the Circuit Court of Dunklin County, on March 7, 1934, which we believe properly determines the salary of the officer in question - likewise, the deputies.

As to the present salary of that official, the same is determined by Section 11786, R.S. Mo. 1929, the pertinent part of which is as follows:

"The clerks of the circuit courts of this state shall receive for their services, annually, the following sums:

In counties having a population of 7,000 persons and less than 10,000 persons, the sum of eleven hundred dollars; in counties having a population of 10,000 persons and less than 15,000 persons, the sum of twelve hundred and fifty dollars; in counties having a population of 15,000 persons and less than 20,000 persons, the sum of sixteen hundred dollars;

* * * *

Provided further, the provisions of this section 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 80,000 inhabitants and less than 150,000 inhabitants, in which circuit court is held in two or more places in said county; for the purpose of this section the population of any county shall be determined by multiplying by five the total number of votes cast in such county at the last presidential election prior to the time of such determination: *****"

In 1933 the Legislature repealed Section 11786, supra, and other sections relating to the fees, payment and disposition of the same by the Circuit Clerk and enacted a new section in lieu thereof known as Section 11786, page 369, Laws of Missouri, 1933; however, said section contains the following proviso:

"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."

In view of the foregoing proviso, it is necessary to continue to pay the Circuit Clerk and Recorder of Deeds in the manner as prescribed in Section 11786, R.S. Mo. 1929. The official returns from Hickory County in 1932, the same being the last general election, shows a total presidential vote of 2464. The multiple as contained in Section 11786 for determining the population is 5. Multiplying the total number of votes cast for President by 5 gives a total of 12,320. Again referring to Sec. 11786, R.S. Mo. 1929, we find the following words: "In counties having a population of 10,000 persons and less than 15,000 persons, the sum of twelve hundred and fifty dollars".

CONCLUSION

In view of the foregoing, it is the opinion of this department that the present salary of your Circuit Clerk and Ex-officio Recorder of Deeds should be the sum of \$1250.00 annually.

In 1933 the Legislature repealed Section 11812, R.S. Mo. 1929 and enacted in lieu thereof Section 11812, Laws of Mo. 1933, page 371, relating to the compensation and appointment of deputy circuit clerks. It has been ruled by this department that this section became effective 90 days after the adjournment of the 1933 General Assembly.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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