

COUNTY CLERK: Compensation of Clerk and Deputy limited by law and cannot be increased during term.

10-15
October 11, 1934.



Honorable T. J. Harper
Prosecuting Attorney
Stone County
Gallena, Missouri

Dear Sir:

Your request for an opinion dated September 5, 1934, is as follows:

"I am asking for an opinion on the following law or ruling:

" 'In a County of 11,614 population according to the last dec. census, what is the deputy county clerk's hire.'"

Your letter of the same date stated the facts as follows:

"In asking the foregoing question of the First sheet is because the County Clerk and the Court is in a squabble over the rights of the Court in the matter. The facts are the Court in 1932 made an order allowing the pay of the Deputy Co. Clerk the sum of \$62.50 per month, and all along has approved his settlement on that basis, and paid him, and each quarter has so settled, and made it of record. Is the Court within their rights and can any further claim be made for more salary by the Clerk under the law? Can he go back of the record of the Court in asking these settlements?

"He is claiming the law allows him more money, but in his budget claim he only asks \$750.00 for Deputy hire and did not raise the question until

after the state audit started. So please send an opinion as soon as possible."

Section 11811, R. S. No. 1929, provides in part as follows:

"* * * * In all counties containing fifteen thousand inhabitants or less the clerks shall be permitted to retain twelve hundred and fifty dollars for themselves, and be allowed to pay for deputies or assistants not exceeding six hundred dollars: Provided, that the county court in all counties in this state having a population of seven thousand and less than forty thousand may allow the county clerks and circuit clerks 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 such clerk or clerks demand or require such extra remuneration and that the fees collected and taken in by such clerks is sufficient to pay the same, but in no event shall any such allowance be made by the county court where the fees collected by such clerk or clerks is not absolutely sufficient to meet such demand. In all counties having a population of less than seven thousand persons, the clerks shall be permitted to retain all fees earned by them for themselves and deputies. For the purpose of articles 2 and 3 of this chapter, the population of any county shall be determined by multiplying by three and one-half the total number of votes cast in such county at the last presidential election prior to the time of such termination: * * * *."

Article XIV, Section 8 of the Missouri Constitution provides as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In the case of Callaway County v. Henderson, 119 Mo. 32, l. c. 40; 24 S. W. 437, our Supreme Court said while adjudicating a false claim of a county clerk:

"The acts of the twenty-first of March, 1883, of the thirtieth of March, 1887, and of the twelfth of April, 1889, all limit the amount of fees which a clerk may retain for one year to the sum of \$1500.00, and the amount which he may pay out for deputies and assistants to \$1250.00, in counties of the population before mentioned. Under section 8, of article 14, of the the constitution, the compensation of the clerk cannot be increased during his official term. The amounts, therefore, which he may retain for 1890 are \$1500.00 for himself and \$1250.00 for deputy hire."

Our Supreme Court said in Givens v. Daviees County, 107 Mo. 603, l. c. 608; 17 S. W. 998:

"To what compensation was plaintiff entitled for his services as treasurer from January 24, to April 1, 1887? The principal contention, and the chief difficulty, lie in the proper solution of this question. Some general principles which underlie the question are well settled and well understood.

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"A public officer is not entitled to compensation by virtue of a contract, express or implied. The right to compensation exists, when it exists at all, as a creation of law, and is an incident to the office."

In the case of *Folk v. City of St. Louis*, 157 S. W. 71; 250 Mo. 116, l. c. 135, the Court said:

"It was to prevent persons while possessed of the prestige and influence of official power from using that power for their own advantage that the framers of our organic law ordained that salaries of public officers should not be increased during the terms of the persons holding such offices."

Thus we see that if your county clerk is entitled to any compensation, it is because he is able to cite to you some statute where clerk hire is incidental to his office, and we believe the only legislative act on the subject is to be found in Section 11811, set out supra.

The County Court has no legal right to disregard this law, and allow him a hire in excess of the compensation that the Legislature provided. Then too, his right to compensation is expressly limited by the Constitution, the fundamental laws of Missouri, and cannot be increased during his official term. In fact any allowance by order of the County Court contrary to the Statutes and the Constitution, cannot be made the basis of a legal binding obligation in favor of your County Clerk or his deputy.

In the budget allowance for deputy county clerk's hire, the county court had no right to disregard, (and we do not think they did) the provisions of Section 11811 supra providing for and stipulating the limitations of compensation to county clerks and deputy county clerks in Stone County. By said section, when the legislature said "that the county court shall determine that the work required to be done by such clerk or clerks demand or require such extra remuneration

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and that the fees collected and taken in by such clerks is sufficient to pay the same," the Legislature was intending to make the county clerk's office pay its own way. The recent budget law was also intended to place counties on a cash basis. Both the budget law and Section 11811 should be construed together and given force when determining the compensation of a county clerk and his deputy in Stone County.

Although your letter does not so state, we are assuming that the fees collected by the county clerk of Stone County are absolutely sufficient to meet this Twelve Dollar and fifty cent (\$12.50) extra monthly budget allowance for extra clerk hire, but it must be remembered, if the county clerk's collected fees are not absolutely sufficient to meet this added demand after all other legal demands against his office are deducted, then this Twelve Dollars fifty cents (\$12.50) extra monthly allowance is illegal and should not be paid, even though it be provided for by court order and was anticipated in the provisions of the annual budget. Any compensation allowance by order of the county court, even though anticipated by in the annual county budget, if it be made contrary to the provisions of the above statute, cannot be made the basis of a legal binding obligation in favor of your county clerk or his deputy.

Assuming that the extra remuneration order of your County Court made in 1932, anticipated in the 1934 budget, allowing Sixty Two Dollars and fifty cents (\$62.50) per month, or Seven Hundred Fifty (\$750.00) Dollars per year as compensation for the County Clerk's deputy, to be made after the court had determined that the work of the office justified extra remuneration, and assuming that the Twelve Dollars fifty cents (\$12.50) extra monthly remunerations is justified by the county clerk's collections; the next question presented by your query for determination is the right of the county clerk to a compensation for deputy hire in excess of the amount determined and allowed by order of the County Court and the 1934 budget allowance.

You state that the amount of compensation allowed by order of the County Court and anticipated by county budget is Sixty Two Dollars fifty cents (\$62.50) monthly, or Seven Hundred Fifty (\$750.00) per year. You state that your county clerk demands more money for clerk hire, claiming that the County Court has the right to give him more money for clerk hire in the face of this prior court order and the budget allowance.

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The Missouri Constitution quoted supra, provides that compensation of county officers cannot be increased during their term of office. The reason for such a constitutional inhibition is well stated in *Folk v. City*, supra. Because of this constitutional inhibition the deputy clerk, for past services, is limited to Sixty Two Dollars fifty cents (\$62.50) monthly, the hire which was provided for by court order. It is within the power of the County Court to change the present order for future services of deputy clerk hire up to Eleven Hundred (\$1100.00) Dollars annually. If such an order be made in an effort to increase the hire for the remainder of the fiscal year 1934, for future services during 1934, such an order would have the effect of nullifying the very purpose of the recent county budget law. Without setting out the county budget law in full, it suffices to say that its purpose was to place counties on a sound financial basis of operating within anticipated and collected revenues by budgeting and setting aside definite amounts for definite purposes. This was done in Stone County when Seven Hundred Fifty (\$750.00) Dollars was set aside for deputy county clerk hire for the year 1934. For said fiscal year the clerk's hire is fixed and cannot be increased beyond the budget allowance without making the officers liable who participate in the issuance and payment of hire contrary to provisions of the county budget law.

In the County Budget Laws of 1933, page 346, where the Legislature was commanding sanction of budget estimates in Section 8, they said:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

CONCLUSION.

The County clerks in Stone County may be allowed up to Eleven Hundred (\$1100.00) Dollars for deputy

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county clerk's hire, but this extra allowance above Six Hundred (\$600.00) Dollars yearly must be justified by collections of said office and by a need for extra work, and then only upon a County Court order for future services. Any allowance of hire by the County Court must be provided for in the annual county budget and it is not within the power of the County Court to increase the deputy clerk's hire beyond the budget allowance during a fiscal year. Any increase in deputy clerk's compensation must be provided for when preparing the fiscal budget.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

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