

CIRCUIT CLERK: Salary of Circuit Clerk of Polk County for last two years should be computed as to population on presidential vote of general election of 1932.

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December 29, 1934.



Hon. Jesse House,  
Clerk of Circuit Court,  
Bolivar, Missouri.

Dear Sir:

This department is in receipt of your letter of December 21, 1934, wherein you request an opinion as to the following:

"As Circuit Clerk of Polk County, a question has arisen whether or not I should be paid a salary until the expiration of my present term, December 21, 1934, on a basis of population computed on the presidential vote of 1928, or should it be for 1932?"

Section 11786, Laws of Mo. 1933, page 369 provides in part as follows:

"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."

We construe this provision to refer to the old section, namely, Sec. 11786, R.S. Mo. 1929, the pertinent part of which is as follows:

"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: \*\*\*"

As to the question of whether or not the population should be computed on the presidential vote of 1928 or 1932, we are assuming that you were elected in 1930, which is termed the "off year".

This question was before the Supreme Court in the case of State ex rel. Moss v. Hamilton, 303 Mo. 302, wherein the Court said (l.c. 313-315):

"Relator's term began on January 1, 1919, and ended on December 31, 1922. No law was passed between those dates which increased his salary. The whole difficulty, if there be difficulty in the case, arises out of the fact that clerks of circuit courts are not elected at Presidential elections, but at what we call the off-year elections, whilst the Act of 1915 fixed the method of determining the salary by Presidential election dates and data. Were our circuit clerks elected in Presidential years, there would not be before us the peculiar and rather difficult question we have in the instant case. This Act of 1915 was in effect when relator was elected. Under it relator's salary was fixed for his whole term, but not in named dollars and cents for the whole term. The effect of this Act of 1915, was to say to relator, your salary shall be determined upon the Presidential vote of 1916, until there is another Presidential election, at which time your county may be in a lower or a higher class, according to the population indicated by the Presidential vote. The salary, in amount, was fixed by law as to relator's office in any event. If his county was not subjected to a change of class, his salary was not changed. If his county (by a decreased population) dropped to a lower class, his salary was

fixed, and was fixed before his election, although the change of class might give him a different amount. So too if his county increased in population and thereby passed to a higher class, the existing law (that in force at the time of his election) fixed for him a salary. True it was higher, but it was definitely fixed at the date of his election. If the Act of 1915 had said that the Circuit Clerk of Crawford County elected in 1916 shall receive \$1600 per year for the first two years, and \$1950 per year for the last two years of the term, there would be no question. Sec. 8 of Article 14 of the Constitution could not be invoked, because the salary would not be either increased or decreased during the term. To my mind the Act of 1915 as it now stands is no nearer a violation of Section 8 of Article 14 of the Constitution, than the supposed law. The law-makers knew the Presidential election years, and with this knowledge classified the counties as to salaries, and provided that such salaries should be determined by the last previous Presidential vote. The salary of each class was fixed, and, as said, no subsequent law has changed the fixed salaries. The mere fact that a county passed from one class to the other does not deprive the holder of the office of the salary fixed by law, and fixed, too, at a time long prior to relator's election. In our judgment Section 8 of Article 14 of the Constitution does not preclude a recovery for relator. This because his salary was fixed by law before his election, and no law since enacted has changed it, except as we may hereafter note. The cases cited have no application to this state of facts. The exact question has never been ruled before. There is some language in *King v. Texas County*, supra, which might be construed to be in support of this ruling, but the question was not squarely at issue in that case."

#### CONCLUSION

In view of the above decision, it is the opinion of this department that the salary of your office for the last two years

Dec. 29, 1934.

should be computed as to the population, based on the Presidential vote of the general election of 1932.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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