

COUNTY CLERK:

Deputy County Clerk may be put on the new salary schedule as set out in Section 11811, Laws of 1933, page 371, at any time after said law becomes effective.

February 20th, 1934.

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Mr. W. S. Matthews,
County Clerk,
Troy, Missouri.

Dear Mr. Mathews:-

We have your letter of January 15, 1934, in which was contained a request for an opinion as follows:

"In regard to salary of Deputy County Clerk and Deputy Circuit Clerk: Does the new law in regard to the regulation of their salary go into effect on July 27th. or is it the same as the Clerks to remain the same for the remainder of the present term?

"I am attempting to put my deputy on the new salary schedule. Is it your opinion that I can do this? I am presenting my annual settlement next month and would like to know if I am right."

We are of the opinion that you may put your deputy on the new salary schedule at any time from now on. This has, in our opinion, been possible ever since the law in question (Section 11811, Laws of 1933, page 370) became effective, or ninety days after April 25, 1933, the date of adjournment of the legislative session, the proviso clause at the end of the section notwithstanding.

Section 11811, Revised Statutes of Missouri, 1929, provides in part as follows:

"Section 11811. * * * * Provided, that the person now holding the offices, the salaries of which are determined by this section, shall, to the ends of the terms for which they are chosen, draw the same salary that was paid to the persons holding such offices at the time of the general election of November 2nd, 1920.' * * *".

Section 11811 as reenacted, Laws of 1933, page 370, provides in part as follows:

"Section 11811. * * * Provided, further, that until the expiration of their present term of office, the person holding the office of County Clerk shall be paid in the same manner and to the same extent as now by law provided. * * *".

Mr. W. S. Mathews

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February 20, 1934.

It might be contended that the proviso clause in the 1929 section included deputy county clerks within its terms, but we need not pass on that question. It is noteworthy, nevertheless, that the 1929 section refers to "the person now holding the offices the salaries of which are determined by this section". When, however, we come to the 1933 section the legislature refers in specific wording to "the person holding the office of County Clerk". In other words, the legislature has confined itself in the 1933 section to saying that a specific officer shall be paid under the old law until the end of his term, while in the 1929 section it referred to a group of people, thereby opening the field for conjecture as to what people were included. If this change of wording means anything at all, and we must assume that it does, it means that the legislature intended the proviso clause to apply to County Clerks as such and to no one else, not even to deputies.

With regard to deputy circuit clerks, the new law (Section 11812, Laws of 1933, page 371) sets no definite limitation on salaries except in counties having a population of 12,500 or less, and since Lincoln County has a population of 13,929 this does not apply. In addition, there is no provision in said section for the holding of office under the old law until the end of the present term.

In view of the above, therefore, we feel you can proceed under the new law as to both county and circuit deputy clerks' salaries.

Very truly yours,

CMHJR:LC

CHAS. M. HOWELL, Jr.
Assistant Attorney General.

Approved:

Attorney General.