

CIRCUIT CLERKS AND DEPUTY CIRCUIT CLERKS: Amount, method and source of compensation.

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November 21, 1934.

Hon. Thomas A. Mathews,  
Prosecuting Attorney St. Francois County,  
Farmington, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of November 15th, 1934, such request being in the following terms:

"At the last general election, our old Circuit Clerk, J. C. Reifner, was defeated by F. P. Graves.

F. P. Graves, Circuit Clerk-elect, by his Attorney, Harry C. Smith, of Farmington, Missouri, has been advised that under the Laws of 1933, pages 69 to 72 inclusive, that he will be, under that law, permitted to employ two (2) Deputy Circuit Clerks; this County, by the last Federal Census, has a population of 36,000 and less than 70,000; by Section 11736, Laws of 1933, pages 369 and 370, it is provided that the Circuit Clerk of this County receive a salary of \$2500.00; by Section 11814, Laws of Missouri, 1933, at page 372, you will see that it is the duty of the Clerks' of all Courts of record, to charge and collect certain fees, and it becomes the Circuit Clerk's duty to quarterly pay into the County Treasury, the amount of any fees collected, in excess of the sums permitted to be retained for services and pay of Deputies and Assistants.

I, as Prosecuting Attorney of this County, request you to give me a written opinion as to whether or not the Circuit Clerk shall receive, in this County, it having a population of 30,000 and less than 70,000, \$2500.00 salary, and in addition thereto, the County Court shall pay the salaries of the two (2) Deputy Clerks. As I understand it, both the salary for the Circuit Clerk of this County, and the salary for the Deputies, must be paid out of the fees collected, and if the aggregate fees collected exceed the \$2500.00 salary, he is permitted only to pay, out of the excess of the total fees collected, the salary of the one or more Deputy Circuit Clerks. However, as I stated above, Harry C. Smith, ex-Prosecuting Attorney, who is now

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attorney for Mr. Graves, has advised and directed him to demand not only the \$2500.00, but that the County Court, regardless of whether or not the fees collected is to pay the salary of his two (2) Deputy Clerks.

Advise me as soon as you can, by your written opinion, the construction of the Laws of 1933, with reference to the Circuit Clerk's salary and how paid, and the Deputy Circuit Clerk's salary, and how and from what funds they are paid."

The questions raised in your letter have, we believe, been answered by a ruling of this Department directed to Hon. Birt P. Bryant, Clerk of the Circuit Court of Dunklin County, dated March 7, 1934, and signed by Roy McKittrick, Attorney-General, and Franklin E. Reagan, Assistant Attorney-General, copy of which is enclosed. In such ruling you will observe that it is the opinion of this Department that the number of Deputy Circuit Clerks is left to the judgment of the County Court, that the County Court fixes their compensation and is liable to pay the sum out of the general revenue fund of the County, but that the \$2500 allowed as the compensation of a Circuit Clerk in a County having between 30,000 and 70,000 inhabitants is not to be paid by the County Court, the statute providing that such Circuit Clerk shall retain such amount out of the fees collected by him in his official capacity.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General