

CIRCUIT CLERKS in counties having population between 70,000 and 80,000 to receive \$3000.00 annually.

December 27, 1934.



Mr. Geo. E. Masters
Clerk, Circuit Court
Jasper County
Carthage, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Page 369 of the 1933 Laws of Missouri repeals Section 11786 of the Revised Statutes of Missouri for 1929. I, as Circuit Clerk of Jasper County, have been drawing the salary of \$3000.00 per year under that Statute Section on the following basis, to-wit: 'in which circuit court is held in two or more places in said County;' (Carthage and Joplin in Jasper County). The population of Jasper County, according to the decennial census is 73,810, and never has reached the 75,000 mark. Section 1, 1933 Missouri Laws allows the Circuit Clerk of Counties of 75,000 and less than 90,000 population a salary of \$4000.00. Greene County falls in this class and has court in only one place. Jasper County falls below the 75,000.00 but has court in two places, necessitating the keeping of two offices. Section 1, page 375 says nothing about Court in two places. I am at a loss as to what class Jasper County is in. Jasper County with Court in two places, surely would not fall in the class under Section 11786 on page 369 of Missouri Laws for 1933."

The population of Jasper County, according to the United States Census of 1930 is 73,810 inhabitants.--Official Manual of the State of Missouri, 1933-34, page 546.

Laws of Missouri, 1933, page 369, Section 1, in part provides as follows:

"That sections 11786 -- 11811 -- are hereby repealed and five new sections pertaining and relating to the same subject to be known as Sections 11786 -- 11811 -- be and are hereby enacted in lieu thereof, to read as follows: "

Section 11786, R. S. Mo. 1929 (repealed) had this provision:

"The clerks of the circuit courts of this state shall receive for their services, annually, the following sums: * * * * * Provided further, the provisions of this section shall not apply to * * *, 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;"

Section 11811, R. S. Mo. 1929 (repealed) provided in part as follows:

"The aggregate amount of fees that any clerk under articles 2 and 3 of this chapter shall be allowed to retain for any one year's services shall not in any case exceed the amount hereinafter set out. * * * Provided, however, that in all such counties having a population of 75,000 persons and less than 125,000 persons, and where circuit courts are held in more than one place, the clerk of the circuit court * * * be and are hereby permitted to retain annually the sum of _____ * * *."

Section 11866, R. S. Mo. 1929, provides in part as follows:

"From and after the expiration of the term of office of the present incumbents, the following salaries per annum shall be paid the hereinafter named officers of all counties in this state, which now contain or may hereafter contain eighty thousand inhabitants and less than one hundred and fifty thousand inhabitants, and in which circuit court is held in two or more places in said county, viz.: Clerk of circuit court, two thousand dollars; * * * "

The above section was repealed by implication by Laws of Missouri, 1933, page 375, Section 6. Thus, any former statute or statutes under which you receive compensation as Circuit Clerk (Davis v. Jasper County, 300 S. W. 493) were repealed in 1933 by the Legislature. Prior to repeal of the above 1929 statutes in 1933 by the Legislature, the population of Jasper County was determined by the multiplication method and when that fact was ascertained the other statutes determined the amount of compensation. However, in 1933, the Legislature enacted new and entirely different laws pertaining (1) to the method of computing the population, and (2) a classification as to salaries to be received by circuit clerks after the population was determined. The population after the present terms of the circuit clerks expire will be determined by the decennial census of the United States.

Section 11808, Laws of Missouri, 1933, page 370, reads as follows:

"The last previous decennial census of the United States shall be the basis for determining the population of any county in this state, for the purpose of ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants."

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

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. * * *; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3000.00; * * *; 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."

Thus, when the present term of the circuit clerk has expired, new section 11786, Laws of Missouri, 1933, page 369, will be effective. Your county has a population, according to the decennial census, between 70,000 and 80,000 persons, to-wit, 73,810 inhabitants. Hence, the annual fees that may be retained by the circuit clerk taking office in 1935 will be \$3000.00, and such is our opinion.

We base this opinion on the assumption that the act is constitutional. If you are dissatisfied with the present law, then you should address your complaint to the Legislature as it has the sole power to remedy same.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.