

CIRCUIT CLERK DEPUTIES:

Governed by Senate Bill 74 Page 371, Laws of Missouri, 1933 after July 24, 1933.

5-21  
May 12, 1934.



Hon. Gladys D. Middleton  
Clerk of the Circuit Court  
Lancaster, Missouri

Dear Madam:

I acknowledge receipt of your requests for opinions of this office, portions of which read as follows:

"\* - \*What I especially want to know is whether or not a deputy Circuit Clerk and Ex-Officio Recorder of Deeds should put in full time and whether or not the salary of such deputy should be reduced as provided in the above section."

"Will you please tell me whether or not Section 11812 Laws of Missouri, 1933, is effective before January 1, 1935?"

Also please tell me whether or not this Section applies to the Circuit Clerks and Deputies where the Clerk is Ex-Officio Recorder of Deeds? \* \* \* \*"

I.

SECTION 11812 LAWS OF MISSOURI  
1933 EFFECTIVE JULY 24, 1934.

Section 11812 as amended by the 57th General Assembly is found at page 371 Laws of Missouri 1933 and reads as follows:

"Every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such official with the approval of the county court, as such court shall deem necessary for the prompt and proper discharge of the duties of his office.

The County Court, in its order permitting the clerk to appoint a deputy or assistant, shall fix the compensation of such deputy or assistant which, in counties having 12,500 persons and less, shall not exceed the amount allowed deputy or assistant to the county clerk for the actual time employed and shall designate the period of time such deputy or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or hereemployment, and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it."

A comparison of this amended Law with Section 11812 as found in the 1929 revision indicates that there were two objectives in the amendment of this section. The first was that the approval of the appointment and the fixing of the compensation of deputy circuit clerks were transferred from the Circuit Court to the County Court; and second, the amount permitted to be paid deputy circuit clerks in counties of 12,500 inhabitants or less was limited to the amount permitted to be paid deputy county clerks of such counties. In other respects the section is identical with the 1929 revision. We direct your attention to the last sentence of the section which empowers the circuit clerk to regulate the time of the employment and to discharge the deputy at any time and empowers the county court to modify or rescind its order respecting the appointment of the deputy circuit clerk and to reduce the compensation of such clerks. No mention is made as to any term of the deputy circuit clerk and it is apparent that deputy circuit clerks hold their offices at the pleasure of the appointive power. That being the case it cannot be said that the deputy circuit clerks have any term of office in a legal sense.

As stated by Throop on Public Officers, Section 303:

"The word 'term' is uniformly used to designate a fixed and definite period of time \* \* and an officer who holds his office at the pleasure of another officer \* \* has no official term, within the meaning of a constitutional or statutory provision relating to such term' "

As stated by Judge Lamm in the case of State ex rel. vs. Gordon, 238 Mo. 168, l. c. 181:

"It seems to us that the cited authorities directly apply to the situation thus presented; for the sum of the matter is that any one who holds office at the pleasure of the appointing power has no 'term of office.' "

It therefore appears that deputy circuit clerks are in the same position as any other employee. Such being the case, there would be no constitutional or statutory objection to the immediate application of the law upon appointments in existence on the effective date of the law.

This construction is in accord with the legislative intent as expressed in Section 11786, a proviso of which reads:

"Provided further that until the expiration of their present terms of office the persons holding the office of circuit clerks shall be paid in the same manner and to the same extent as now provided by law."

No saving provision was made in favor of deputies. The benefits of this clause are exhausted in applying it to the Circuit Clerks.

It is therefore the opinion of this office that this bill became effective July 24, 1934, except for the proviso delaying the operation of the reduction of Circuit Clerks' salaries until January 1, 1935.

## II.

SENATE BILL 74 LAWS OF MISSOURI  
1933, p. 369, APPLIES TO CIRCUIT  
CLERKS AND DEPUTIES WHERE CLERK IS  
EX OFFICIO RECORDER OF DEEDS.

An examination of Article I of Chapter 74 in the 1929 revision respecting Recorders of Deeds, and as amended by Senate Bill

75, page 360, Laws of Missouri, 1933, fails to reveal any authority for the appointment of deputies by Circuit Clerks who are ex officio recorder of deeds. In Article 1 of Chapter 77 we find the general statute Section 11680 authorizing every clerk of a Court of Record to appoint one or more deputies. However, this section is a general section and in our opinion has been superseded by Section 11812 insofar as it might apply to the appointment of deputy circuit clerks. It is a recognized rule that special statutes on a given subject supersede general statutes unless there is a clear and specific intent to the contrary. State ex rel. vs. Koeln, 61 S. W. (2d) 750. Without question it was intended that Senate Bill 74 was intended to be applied in counties where the Circuit Clerk was ex officio recorder of deeds. We refer particularly to the following clause in Section 11786:

"Provided that in any county wherein the clerk of the circuit court is ex officio recorder of deeds said offices shall be considered as one for the purpose of this section."

We have not passed on the constitutionality of this law, that being a matter proper to be placed before the courts. However, we have heretofore expressed a doubt as to the constitutionality of this law as applying to circuit clerks who are ex officio recorder of deeds. In our opinion as the law now stands it is clearly intended to govern all circuit clerks, and we conclude that Section 11812 Laws of Missouri, 1933, applies to your case.

### III.

SALARY OF DEPUTY CIRCUIT CLERK  
SHOULD BE REDUCED AS PROVIDED BY  
SECTION 11812 LAWS OF MISSOURI 1933  
PAGE 371.

In dealing with your first inquiry we have stated that the clause

"\* \* \* The compensation of such deputy\* \* \* in counties having 12,500 persons or less shall not exceed the amount allowed\* \* \* to the County Clerk for the actual time employed\* \* \*"

is to be given operative effect on July 24, 1933. That being the case your deputy circuit clerk should not be paid a greater sum than

is allowed the deputy county clerk for the actual time employed. By referring to Section 11811 p. 369, Laws of Missouri, 1933, we find the legislature has definitely stated the amount which may be retained by the County Clerk for the payment of deputy hire. A part of this Section reads as follows:

"In Counties having a population of less than 7500 persons the clerks\* \* \* shall be allowed to pay his deputies and assistants \$600.00; in counties having a population of 7,500 and less than 10,000 persons the clerks\* \* \* shall be allowed to pay for deputies and assistants \$900.00; in counties having a population of 10,000 and less than 11,500 persons the clerks shall be allowed to retain\* \* \* not to exceed \$900.00 for deputy hire; in counties having more than 11,500 persons and less than 12,500 persons the clerks\* \* \* shall be allowed to pay for deputies and assistants \$1100.00;\* \* \* and provided, further, that in counties in which the clerk of the county court is ex officio recorder, said clerk shall be allowed to pay for deputies or assistants not exceeding the sum of \$500 in addition to the amount provided in this section.\* \* \*"

This definite schedule based upon population has established the amount allowed to be paid for deputy hire by county clerks. This schedule has been adopted in Section 11812 by the clause heretofore quoted as the classification determining the amount permitted to be paid deputy circuit clerks in counties having less than 12,500 persons. The purpose of this amendment was simply to limit "the amount allowed" to be paid and is intended to operate as the maximum which the County Court may allow for deputy circuit clerk hire. Under Section 11811 the County Court of Schuyler County, being a county of less than 7,500 persons, could authorize the expenditure of \$1100.00 for deputy County Clerk hire if the County Clerk was ex officio recorder of deeds. The statute has authorized this total expense for deputy county clerk hire. We interpret the provisions of Section 11812 hereinbefore quoted as adopting this total sum as being applicable to deputy circuit clerks in the event the circuit clerk is ex officio recorder of deeds. It is apparent that it is the legislative intent to allow additional expense for clerk hire when a clerk is ex officio recorder. The logic and reason of this allowance is the same whether it be the circuit clerk or the county clerk who is ex officio recorder. The clause hereinbefore quoted

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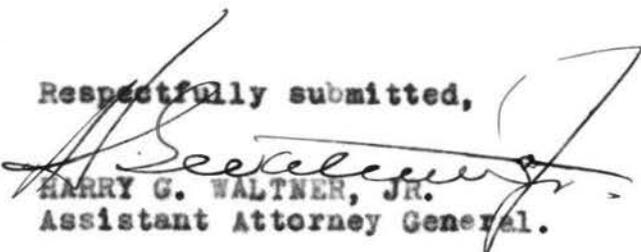
Section 11812, refers to "the amount allowed" by law and not the amount allowed in fact.

The phrase "for the actual time employed" is somewhat ambiguous. It is difficult to ascertain whether "actual time employed" refers to the deputy county clerks or the deputy circuit clerks. This section also authorizes the county court "to designate the period of time such deputy or assistant may be employed," and directs the clerk to "regulate the time of his or her employment."

It is apparent from these provisions that part time employment of deputy circuit clerks is recognized by the Legislature as being common practice. The County Court may in its order direct the period of time for which the deputy may be employed and the clerk is authorized to fix the hours of employment. It was intended that the deputy only be paid for actual time employed. The County Court in fixing its compensation could not expend in excess of the sum of \$1100.00 annually, in the instant case, as compensation to the deputy circuit clerk for time spent in performing the duties of the office.

We are therefore of the opinion that the provisions of Section 11812 Laws of Missouri, 1933, page 371, are now effective and when construed with Section 11811 authorize the County Court to allow not to exceed the sum of \$1100.00 per annum as compensation for deputies in your office.

Respectfully submitted,

  
HARRY G. WALTNER, JR.  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

HGW:MM