

SALARIES AND FEES:

Court Reporter's salary determined
by decennial census.

4-23
April 12, 1934



Hon. Morris E. Osborn
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Mr. Osborn:

This is to acknowledge your letter which reads
as follows:

"This letter will introduce Mr. Chas. W.
Heumann, Jr., Court Reporter for Judge
#. L. Drain.

I have been informed that the County
Court of Macon Missouri, one of the
counties of the Judicial District of
Judge V. L. Drain, has instructed its
County Treasurer to reduce the salary
of Mr. Heumann in conformity with an
opinion rendered by your predecessor,
the Hon. Stratton Shartel, on the 16th
day of February 193___. Also it has been
called to my attention that your Dep-
artment has affirmed that opinion.

I hope it is not asking too much, but
as a friend and as the Attorney General
of the State of Missouri, I beg of you
to re-examine the case law of this
State for the purpose of ascertaining
whether you deem it necessary to re-
write this opinion.

In asking that you re-write this opinion,
I want to call your attention to the
recent decisions pertaining to the
salaries of Court Reporters in this State,
and particularly to the Hoffman case in

the 294 S. W. Page 249. My information is that Mr. Shartel's opinion, the opinion which you have affirmed, holds that the court reporter of Pettis County is entitled to be paid according to the population ascertained by the general election vote multiplied by five; that you come to this conclusion because his circuit consists of only one county. Should you multiply the vote of Macon County at the last presidential election by five you will find that Mr. Heumann is entitled to \$3000.00. Therefore, according to your opinion, he is penalized to the extent of \$1000.00 because his circuit consists of two counties.

You will further recall that in the Prosecuting Attorneys case to-wit: State ex rel O'Connor -vs- Reidl, 46 S. W. (2) Page 133., the Hon. Judge Ragland held that the prosecutors could be paid on a population basis on the last decennial census because where all the prosecutors of the State were paid on the same basis then there was a compliance with Article 9 Section 12 of the State Constitution. Do you believe that a court reporter of the circuit consisting of Pettis County and the court reporter of the Judicial Circuit consisting of Macon and Shelby Counties can be paid on two entirely different basis and yet the conformity section of the State Constitution be complied with?

Personally, I cannot understand why a Court Reporter should be so penalized because there are more than one county in his circuit. To me it seems absolutely in conflict with the uniformity salary section of the State Constitution.

Trusting that you will give this matter your earliest attention, I am."

The narrow question presented in your inquiry is: What basis is used (census or multiplication method) in determining population of Second Judicial Circuit in order to classify court reporter as to salary?

I.

The Second Judicial Circuit consists of Macon and Shelby Counties. The population of these counties according to the last previous (1930) decennial census of the United States is as follows:

Macon County 23,070; Shelby County 11,983 - - a total population of 35,053 for the circuit (Official Manual of the State of Missouri 1933-34).

II.

Laws Missouri 1933, page 369, repealed and re-enacted Section 11808 R. S. 1929 so that said section now provides:

"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."

Previous to the enactment of the above statute salaries of county officers not otherwise provided for were ascertained by the multiplication method, that is the multiplying of the total vote in the last general election by five as was done in the case of State ex rel. Rucker v. Hoffman 294 S. W. 429 (Kansas City Court of Appeals), in which the court said:

"Having found that such reporter is a county officer and that the proper basis for calculating his salary is by taking the highest number of votes cast at the last general election and multiplying them by 5, it follows * * * * * and that the salary of such reporter is \$3,000 per annum."

In the above case Pettis County was a circuit separate and independent of itself and it apparently conflicts with State ex info. v. McKay 249 Mo. (En Banc) 249.

In the McKay case the question for determination was that of fixing the term of office of a court stenographer, and in which the court held that a court stenographer was an officer of the court and held his term so long as the judge was in office. In State ex rel. Adams v. Coon et al. 295 S. W. 821 (Kansas City Court of Appeals) l.c.823, the court referred to the McKay case, saying the following:

"The decision in the McKay case was handed down April 8, 1913. The Legislature of 1919 (Laws 1919, p.713) repealed sections 11231 and 11244, R.S. 1909, and in lieu thereof enacted section 12668, R. S. 1919, which provides that the official court reporter 'shall hold his office during the term for which the judge appointing him was elected.' It was evidently the purpose and intent of the Legislature to remove the ambiguity referred to in the McKay opinion, and to fix definitely the term of office of the official court reporter as the term for which the judge appointing him was elected."

As shown above the Second Judicial Circuit is composed of two counties, and that in the Hoffman case it was decided that the court reporter in a circuit that comprised only one county was a county officer; so we do not believe that the Hoffman case is analogous to the present inquiry. However, we do not believe it necessary or decisive of the question here involved to determine the applicability of the McKay case and the Hoffman case in this inquiry for reasons hereinafter stated.

III.

Section 11720 R. S. 1929 provides the compensation or salary to be paid to court reporters. This statute was before the court for construction in State ex rel.

Gleason v. Walker (Supreme Court En Banc) 257 S. W. 470. At page 473 thereof the court said the following:

"Such considerations, in view of the ambiguity of the language used in said section, require the following construction to be given to said section 12670; (11720 R. S. 1929): In all judicial circuits having a population of 60,000 or more, the salary of the official court reporter is \$3,000 per annum; in all judicial circuits having a population of 45,000 and less than 60,000, such salary is \$2,500 per annum; in all judicial circuits having less than 45,000 population, such salary is \$2,000 per annum. Where the judicial circuit comprises only one county or one city, as St. Louis, such salary is payable out of the county (or city) treasury in equal monthly installments; where the judicial circuit is composed of two or more counties, such salary is payable in equal monthly installments out of the county treasuries of the respective counties, and the amount thereof any particular county must pay is such proportion as its population bears to the population of the entire circuit.

Such construction makes of section 12670 a simple, workable, and common sense law. Any other construction makes it unreasonable and absurd."

The defining then of the above section by the Supreme Court is controlling. We call to your attention the fact that the court says,

"Such salary is _____ per annum."

In other words it is an annual salary and not a salary dependent upon the term.

" 'Annual salary,' as used in said section 10938, means salary for each year of the incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that 'annual,' as applied to salaries, means not the calendar years, but the years of the incumbent's term, which in the case of relator begins on the 1st day of April each year."

State ex rel. Harvey v. Linville 300 S. W. (Missouri Supreme) 1066, 1. c. 1067.

Thus the court reporter receives an annual salary, and in 1933 the Legislature (Section 11808) provided

"for the purpose of ascertaining the salary of any county officer for any year"

that it should be based on the previous decennial census.

And, in State v. Walker, supra, the court said (1. c. 472):

"In section 12670 (11270 R. S. 1929) the proviso that, 'where a judicial circuit is composed of more than one county, such salary shall be divided among the counties and be paid by them proportional as the population of such counties bear to the entire population of the circuit,' indicates the legislative understanding and intent that the salary itself should be fixed upon the population of the circuit, rather than upon the population of any county therein."

In view of the foregoing, it is our opinion that the annual salary the Court Reporter of the Second Judicial Circuit will receive, is determined by the population of the Circuit as shown by the previous decennial census.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:LC