

Recorder of Deeds

1. Where offices of Circuit Clerk and Recorder are consolidated due to population they may not be separated until the next decennial census but at that time are separated as a matter of law if the population requirement is met.
2. Salary of Circuit Clerk in county of 19940 population is \$1900 and same where clerk is ex-officio recorder.

June 16, 1934.

6-25



Miss Veda P. Smith
Recorder of Deeds
Carrollton, Missouri.

Dear Miss Smith:

We have your letters of May 21, 1934, and May 22, 1934, respectively in which an opinion is requested as follows:

"Will you please give me the following information:- The Recorder's and Circuit Clerk's office in the County of Carroll, will probably be united, even tho' about 300 population is lacking in the required quota of 20,000.

"If a County should reach 20,000 population after the offices have been consolidated, does the state law require said county to finish out term with both offices united, or will they be divided again according to population?

"Who appoints the Ex-Officio Recorder, and does politics rule the selection of the same?

"What salary is paid the Circuit Clerk under the new rule, and what salary is the Ex-Officio Recorder supposed to get?

"What advantage is this consolidation, and what becomes of the fees outside of Ex-Officio Recorder's salary?

"Who's duty is it to unite the two offices, the retiring Recorder or newly elected Circuit Clerk, and does this change occur Jan. 1, 1935 or after?"

The question of the separation of the offices of Circuit Clerk and Recorder of Deeds cannot arise until the next decennial census is taken which will not be until 1940. Until that time we are of the opinion that there is no way within legal comprehension to compute the population for such purpose, hence it cannot be legally ascertained until that time whether or not the required twenty thousand mark has been reached. Since there is no special gauge for population set out in

the particular laws on this subject we are of the opinion that only the decennial census remains. We are further led to this conclusion by the fact that in the somewhat kindred article relating to the salaries and fees of circuit clerks and such we find the following provision, Laws 1933, page 370:

"Sec. 11808. Last decennial census to determine population.- 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."

Of course in the interim should the legislature pass a law providing for the determination of population for this purpose in some other manner the difficulty would be obviated.

Article XIV, Sec. 5 of the Constitution of Missouri, provides as follows:

"Sec. 5. Tenure of office.- In the absence of any contrary provision, all officers now or hereafter elected or appointed subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."
(underlining ours).

The coming election in your county will place the circuit clerk in office not only as clerk but also as ex-officio recorder of deeds; in other words he might be therefore said, in view of the constitutional provision above quoted, to be entitled to hold both offices for the full official terms. Could a population of over twenty thousand therefore be ascertained, either by act of the legislature so allowing or after the next census, the question would then arise whether the clerk would be entitled to serve out the full terms in his dual capacity, or whether the offices should be immediately separated. In this connection we call your attention to the words in the above quoted constitutional provision, i.e. "In the absence of any contrary provision."

In this instance we feel that there is such a contrary provision, and refer you to the following two sections, Laws 1933, page 360:

"Sec. 11526. Office of recorder of deeds.- There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, "The office of the Recorder of Deeds."

"Sec. 11528. Circuit clerks to serve in certain counties:-
The clerks of the circuit courts shall be ex-officio recorders
in their respective counties, except in counties containing
20,000 inhabitants or more."

The above two sections plainly state in effect that when the
population shall be twenty thousand or more the offices of circuit
clerk and recorder of deeds shall be separate. We feel that these
sections take the situation out of the constitutional provision. In
other words, when the population can be properly and legally ascertained
to be twenty thousand or more then ipso facto the separation of the
offices is accomplished by operation of law.

Your question as to who appoints the ex-officio recorder of
deeds has already been answered, i. e. when the circuit clerk is
elected and takes office he does so in the dual capacity as one and the
same person.

As to the salary to be paid the circuit clerk and ex-officio
recorder we refer you to Laws of 1933, page 369, as follows:

"Sec. 11786. Fees of circuit clerk in certain counties:- 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 less than 7,500 persons, the sum of \$1000.00; in counties
having a population of 7,500 and less than 10,000 persons, the
sum of \$1100.00; in counties having a population of 10,000 and
less than 12,500 persons, the sum of \$1300.00; in counties
having a population of 12,500 and less than 15,000 persons, the
sum of \$1500.00; in counties having a population of 15,000 and
less than 17,500 persons, the sum of \$1700.00; in counties having
a population of 17,500 and less than 20,000 persons, the sum of
\$1900.00; in counties having a population of 20,000 and less than
25,000 persons, the sum of \$2100.00; in counties having a popula-
tion of 25,000 and less than 30,000 persons, the sum of \$2300.00;
in counties having a population of 30,000 and less than 70,000
persons, the sum of \$2500.00; in counties having a population of
70,000 and less than 80,000 persons, the sum of \$3000.00; 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."

As to what is the advantage of this consolidation we can of
course not say what the legislature had in mind but the saving of money
to the county and state would seem to be an important factor. The
extra fees are to be returned to county and state.

Concerning whose duty it is to unite the two offices we feel
it is the duty of the newly elected circuit clerk. Section 11534,
Laws 1933, page 361, provides that present recorders shall serve out

their terms as separate officers. Since therefore there is no consolidation until after the present recorder has left office it of necessity remains for the new circuit clerk to effect the consolidation.

The change occurs on the first Monday in January of January 7, 1935, the date on which the newly elected circuit clerk takes office. (Sec. 11664 Revised Statutes of Missouri, 1929). Since the newly elected circuit clerk is the successor of the recorder, the recorder will hold over until that time.

Trusting the above is the information you desire, we are

Very truly yours,

Chas. M. Howell, Jr.,
Asst. Attorney General.

Approved:

Attorney General.