

PROBATE CLERKS:

Probate Court may not have more than one clerk in one place but deputy clerks may be appointed in same place by the clerk with the approval of the probate judge.

February 17th 2-26-34  
1934.



Judge D. F. Warren,  
Probate Court,  
Trenton, Missouri.

Dear Judge Warren:-

We have your letter of December 27, 1933, in which was contained a request for an opinion as follows:

"At the present time I have one clerk of this Court and my business is such that I desire to appoint a second clerk.

"I would like an opinion from your office as to whether or not this could be done in Counties of this size; in other words, whether or not I can have two clerks or whether the first should be designated as a clerk and the second as a deputy-clerk. In case you find the latter, should that deputy be appointed, take the oath and give the bond as did the original clerk?"

Section 2049, Revised Statutes of Missouri, 1929, provides in part as follows:

"Provided, that any judge of probate may, by an entry of record in said court, appoint a separate clerk, who shall be paid by said judge and shall hold his office at the pleasure of the judge. Said clerk shall take the oath required of other clerks of court in this state, and before entering upon the duties of his office, shall enter into a bond to the state of Missouri, etc."

Section 2063, Revised Statutes of Missouri, 1929, provides in part as follows:

"In all cases where probate courts are or may be held in more than one place in any county, the judge of probate of said county may, by entry of record in said court at either or each of such places, appoint a separate clerk of the court for either or each of said places, who shall be paid by said judge, and shall hold his office at the pleasure of the judge. Every such clerk shall take the oath required of other clerks in courts in this state, and before entering on the duties of his office, shall enter into a bond to the state of Missouri, etc."

Judge D. F. Warren

-2-

February 17th, 1934.

The question of whether the probate court is allowed to appoint more than one clerk depends upon the two statutory sections above quoted. Section 2049 is authority for the proposition that only one clerk may be appointed since the word "clerk" in the singular is used without any qualifying clause. A reading of the entire section discloses that only one clerk as such is intended. Section 2063 enlarges this somewhat but only in the event that the probate court is held in more than one place in the county, in which event a separate clerk (singular) may be appointed for either or each of said places. From your letter we judge that in your county the probate court is held in only one place, hence only one clerk as such is allowed.

We are, however, of the opinion that you may arrange for the appointment of one or more deputy clerks, and we arrive at such a conclusion by the following reasoning:

A probate court is by Article VI, Section 34 of the Constitution of Missouri, and by Sections 1826 and 2045, Revised Statutes of Missouri, 1929, declared to be a court of record.

Chapter 77 of the Revised Statutes of Missouri, 1929, sets out the law with regard to clerks of courts of record and is so entitled.

Section 11680, Chapter 77, Art. 1. R. S. Missouri, 1929, provides as follows:

"Deputies, their duties.-- Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least ~~seventeen~~ <sup>seventeen</sup> years of age and have all other qualifications of their principals and take the like oath, and may in the name of their principals perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies."

Since the probate court is a court of record, since the clerks of all courts of record can appoint deputy clerks and since we find no exception in the statutes as to probate clerks in this matter,

Judge D. F. Warren

-3-

February 17th, 1934.

we are of the opinion that the probate clerk has the power to appoint one or more deputies to be approved by the probate judge. The deputy clerk must, according to the above quoted section, take the oath but need not give bond, as the clerk and his sureties are made responsible for the conduct of this deputies.

Very truly yours,

CMHJr:LC

CHAS. M. HOWELL, JR.  
Assistant Attorney General

Approved:

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