

COUNTY CLERKS--COUNTY DEPUTIES: Salary of County Clerk and his Deputy in Counties having more than eleven thousand five hundred (11,500) persons and less than twelve thousand five hundred (12,500) persons. Salary not to be fixed by County Court.

January 23, 1935.



Honorable F. M. Brady  
Prosecuting Attorney  
Benton County  
Warsaw, Missouri

Dear Sir:

This department is in receipt of your letter of recent date wherein you state in part as follows:

"I would like to have an opinion from you relative to the correct method of arriving at the Salary of the County Clerk and his Deputy, also of the Circuit Clerk and Ex-officio Recorder of Deeds and his Deputy, in Benton County, Missouri, which had a population of 11,708 under 1930 United States Census; also, how the fees are to be paid, whether by the Clerk of Fees taken in or out of the County Treasury, also, if the amounts to be paid for deputy hire of Deputy of Circuit Clerk and County Clerk are to be fixed by the County Court.

"The law relative to these salaries was amended by the State Legislature in 1933, page 369, but there seems to have been some Claims by the Clerks that the Law would not hold up, and it may be that you have already rendered an opinion in the matter and if so then a copy would serve my purpose, but if no opinion has been rendered I would like to have an opinion as the new Clerks will be taking office shortly and it will be necessary to know how to arrive at their compensation and also of the Deputies, as well as to know who will fix the amounts of Compensation for Deputies and manner of payment."

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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."

The population of Benton County, according to the United States Census of 1930, is 11,708 inhabitants--Official Manual of the State of Missouri, 1933-1934, page 546.

Section 11811, Laws of Missouri, 1933, page 370, provides in part as follows:

"The aggregate amount of fees that any clerk of the County 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 more than 11,500 persons and less than 12,500 persons, the clerks shall be allowed to retain \$1300.00 for themselves, and shall be allowed to pay for deputies and assistants \$1100.00; \* \* \* \*."

You will note that the above section provides a maximum of fees that any county clerk may retain for his personal services for one year. This means that the county clerk is entitled to retain fees up to the maximum amount allowed for in this section.

The language in the beginning refers to "the aggregate amount of fees" that a county clerk may retain for one year's service. In view of the foregoing, we are of the opinion that the clear meaning of this language is that, out of the fees collected by the county clerk in his official capacity he shall be allowed to withhold or retain from the money in his custody and

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possession all of it up to a certain amount and none over that amount.

The statutory authority to appoint deputy county clerks in Benton County is found in Section 11680, R. S. Mo, 1929, which provides:

"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 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."

Section 11811, supra, provides that the County Clerk shall be allowed to retain \$1300.00 for himself and to pay \$1100.00 for deputies and assistants. This statutory authority is expressly given to the County Clerk and not to the County Court, and it is clearly evident that he is not limited to the retention of merely his own fees for personal services up to a limited amount but may also retain the maximum fees allotted to him by statute for the pay of his deputies and assistants. It is true that Section 11680, supra, does provide for the approval of the deputy or deputies appointed by the County Clerk but is limited to approval of the appointment and not as to salary.

In view of the foregoing, we are of the opinion that the amount to be paid for deputy hire of county clerks is not to be fixed by the County Court.

As to the questions in your letter dealing with the Circuit Clerk and ex officio recorder of deeds and his deputy, we believe that you will find same fully answered by a ruling of this Department directed to Honorable Birt P. Bryant, Clerk of the Circuit Court of Dunklin County, dated March 7, 1934, and signed by Roy McKittrick, Attorney General, and Franklin E. Reagan, Assistant Attorney General, a copy of which is enclosed;

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and from such ruling you will observe that it is the opinion of this Department that the number of Deputy Circuit Clerks is left to the judgment of County Court, and the county court fixes their compensation and is liable to pay the sum out of the general revenue fund of the county.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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