

CIRCUIT CLERK: Compensation of a deputy clerk is to be fixed by the County Court. In counties having a population of 12,500 persons and less, compensation shall not exceed the amount allowed a deputy county clerk.

2-2  
February 1, 1935.

Hon. Peter C. Breit  
Prosecuting Attorney  
Andrew County  
Savannah, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion, by your predecessor in office, which reads as follows:

"In re: Circuit Clerk's compensation beginning 1935, pay of deputy constitutional, page 369.

"I am in receipt under date of December 21 opinion given to Hon. Birt P. Bryant, Clerk of the Circuit Court of Dunklin County, Kennett, Missouri, relative to the above subject-matter, and referring to this opinion under the subject 'deputy circuit clerk', at page 4, referring the laws of 1933 at page 317, and particularly to 'county court in its orders permitting the clerk to appoint deputies or assistants shall fix the compensation of such deputies or assistants in counties having 12,500, etc.

"As an interpretation of this statute, citing that our county has a population of less than 15,000, I would like your official opinion as to how much the circuit clerk would be entitled to for deputy hire.

"Further, is it discretionary with the county court as to the amount of deputy hire which shall be paid the circuit clerk and can this amount exceed that of the county clerk? Andrew County is a county with a population not in excess of 12,500 persons."

Is it only in counties having a population of 12,000 and less, that the deputy hire of the circuit clerk cannot exceed that of the county clerk, or is it a matter for the county court to fix the amount as they deem necessary in counties of 12,500?"

"Asking your official opinion, \*\*\*"

Section 11812, Laws of Missouri, 1933, pages 371 and 372, 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 her employment, 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."

The above section provides that the County Court shall fix the compensation of a deputy or an assistant circuit clerk which, in counties having a population of 12,500 persons and less, shall not exceed the amount allowed deputies or assistants to the County Clerk for the actual time employed. In counties having a population of over 12,500 persons, no mention is made of the amount of compensation that the County Court is permitted to allow

a deputy or assistant Circuit Clerk.

It is therefore the opinion of this department that the County Court in counties having a population of 12,500 persons or less shall fix the amount of compensation allowed a deputy circuit clerk, which compensation shall not exceed the amount allowed a deputy or assistant to the county clerk. In counties having a population of over 12,500 persons, the amount of compensation allowed a deputy or assistant circuit clerk is discretionary with the County Court.

You state in your letter that Andrew County has a population not in excess of 12,500 persons. We notice however that the 1930 decennial census of the United States shows that Andrew County has a population of 13,469 persons. We therefore call your attention to Section 11808, Laws of Missouri, 1933, page 370, which 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."

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JET/JLH:afj