

COUNTY CLERK - Compensation of deputies.

2-20

February 19, 1935.



Hon. Guy C. Gwyn,
Clerk of County Court,
Paris, Missouri.

Dear Sir:

This department is in receipt of your letter of February 3 wherein you make the following inquiry, and request an opinion as to the following matter:

"The State Auditor has his examiners here working on Monroe County at the present time. *** The examiners say that they have been informed from the office that the Clerk was not entitled to retain the extra \$500.00 for extra deputy hire under Sec. 11811, R.S. 1929; that the same was repealed in the Laws of Missouri, 1933.

I do not feel that this is correct and am asking if your office has rendered an opinion to that effect? If you have not rendered an opinion in regard to this part of the deputy hire, I would appreciate it if you would do so if you have time. The Court allowed me the extra \$500.00 for the year 1934. However, I only used \$152.50 of the amount, but I would hate to have to repay it to the county as I did not retain any of it for myself."

The pertinent part of Sec. 11811, which was passed by the Legislature in 1933, is as follows (Laws of Mo. 1933, page 371):

"Provided, that the county court in all counties in this state having a population of 15,000 and less than 40,000 persons may allow the county clerks to retain, in addition to the amounts herein specified, for deputies' or assistants' hire a further sum not to exceed \$500 per annum to be determined by the County Court of such county: Provided, that the County Court shall determine that the work required to be done by such clerk or clerks demand or require such extra remuneration and that the fees collected and taken in by such clerks is sufficient to pay the same but in no event shall any such allowance be made by the county court where the fees collected by such clerk is not absolutely sufficient to meet such demand: and provided, further, that in counties in which the clerk of the county court is ex officio recorder, said clerk shall be allowed to pay for deputies or assistants not exceeding the sum of \$500 in addition to the amount provided in this section. Provided, further, that until the expiration of their present term of office, the person holding the office of County Clerk shall be paid in the same manner and to the same extent as now provided by law provided that this act shall not apply to counties in which such clerks now or may hereafter receive a fixed salary in lieu of all fees, commissions and emoluments."

The original section, 11811, R.S. Mo. 1929 contained the following proviso:

"Provided, that the county court in all counties in this state having a population of seven thousand and less than forty thousand may allow the county clerks and circuit clerks of such counties, or either of them, to retain in addition to the amount now allowed them for deputy or assistant hire a further sum not to exceed five hundred dollars per annum, to be determined by the county court of such county: Provided, that the county court shall determine that the work required to be done by such clerk or clerks

demand or require such extra remuneration and that the fees collected and taken in by such clerks is sufficient to pay the same, but in no event shall any such allowance be made by the county court where the fees collected by such clerk or clerks is not absolutely sufficient to meet such demand."

We are confronted with the question of what the Legislature had in mind regarding deputies in the proviso: "Provided further that until the expiration of their present term of office, the person holding the office of county clerk shall be paid in the same manner and to the same extent as now provided by law." Clearly, the compensation of the Clerk was to remain without change until the expiration of the term, which was December 31, 1934. The proviso, having made no reference to the deputy, this department has ruled that the new section, 11811, Laws of Mo. 1933, became effective 90 days after the adjournment of the Legislature, which was in July, 1933; hence, since that time there has been no change in the compensation of the deputy. This ruling was made on the theory that the proviso heretofore quoted made no mention of the deputies.

The new section, 11811, Laws of Mo. 1933, p. 370, relating to the salaries of the Clerk and deputy in counties of the population of Monroe County, is as follows: "in counties having a population of 12,500 and less than 15,000 persons, the clerks shall be allowed to retain \$1500.00 for themselves, and shall be allowed to pay for deputies and assistants \$1300.00;"

We must next determine whether or not the extra compensation of \$500.00 which the clerk is permitted to pay his deputies in addition to the compensation to his regular deputy is on an equal footing with that of the regular deputy after the passage of Section 11811 in 1933. Is the \$500.00 a part of the compensation of the deputy when the work is burdensome and the fees are absolutely sufficient to take care of the same? From the language of the statute, it would appear that the extra \$500.00 which may be allowed the Clerk under the old section is purely under the control and discretion of the Clerk himself. It is for a specific purpose by order and approval of the county court. He may hire an extra deputy or more at any salary he wishes to pay. It is true the Clerk does not receive the \$500.00 personally as a part of his own salary, but as stated before, he has absolute control of the fund.

CONCLUSION

We think the Legislature in enacting the proviso that the County clerk should, until the expiration of his term be paid in the same manner and to the same extent as now provided by law, included the provisions as made respecting the additional clerk

in that not more than \$500.00 should be paid as compensation, and this view is further strengthened by the fact that your county court made the order and permitted you to pay the sum of \$152.50 for such additional services.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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