

CIRCUIT CLERKS - Back salaries under Section 11786, R. S.
Mo. 1929 can only be paid from back taxes.

November 18, 1935

11-19



Honorable Percy W. Gullie
Prosecuting Attorney
Oregon County
Alton, Missouri

Dear Sir:

We have your request of November 12,
1935 for an opinion as follows:

"The Circuit Clerk of this County filed with the County Court his account wherein he asked for payment of sum of \$350.00 for year 1933 and the sum of \$350.00 for year 1934 as additional pay he claims to be entitled to. The account was turned down by the County Court and the Circuit Clerk then appealed to Circuit Court.

"The Clerk bases his claim for this additional pay on following facts: for the years 1933 and 1934 he received an annual salary of \$1600.00, at the 1932 Presidential Election our largest vote in county was approximately 4,378; the Clerk contends his salary should have been increased the \$350.00, as multiplying largest vote by 5 would give population of county at more than 20,000. Prior to these years there is no contention about proper salary of \$1600.00 annually.

"Will you please advise me if you consider this claim proper and a legal claim against county?

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"In the event you decide the claim should be allowed, will you please advise me if you think the Circuit Court should render judgment for these sums on respective years of 1933 and 1934, to be paid out of revenue of those years, or would it be a claim to be paid out of current revenue. Under our budget plan no provision is made for payment of such judgment and the Court would not want to issue warrants in excess of that sum allowed under their budget."

We shall subdivide this opinion, for convenience, as follows:

- (1) Salary of circuit clerk for 1933-1934.
- (2) Payment of past indebtedness.

I.

SALARY OF CIRCUIT CLERK
FOR 1933-1934.

The question of determining the circuit clerk's salary has heretofore been passed upon by this office, namely, that for the years 1933 and 1934, a circuit clerk is entitled to a salary based upon Section 11786, R. S. No. 1929, and a copy of an opinion written by the late Carl C. Abington of this office is enclosed herewith.

II.

PAYMENT OF PAST INDEBTEDNESS

Since the circuit clerk, under the above facts in this case, is entitled to the additional

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\$350.00 for each of the years 1933 and 1934, the question arises as to how this back salary can be paid.

Under the county budget act and the Constitution of this State (Article X, Section 12) no county is permitted to become indebted for any amount in excess of its current revenue. It therefore follows that the unpaid salary for 1933 can be paid only from 1933 income and the 1934 back salary can only be paid from 1934 income; the amount of the back salary for these two years cannot be paid from 1935 income unless at the end of the year there is a surplus remaining after all expenses for the current year have been met.

It is, therefore, the opinion of this office that the amount of back salary involved herein can only be paid from the amount collected in back taxes for the years involved, unless at the expiration of this year there is an unused surplus in the county revenue fund.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

FER:PE
Enc.