

IN RE: COUNTY CLERKS: COUNTY DEPUTIES:

Salary of County Clerk and his deputy in counties having a population of 10,000 and less than 11,500 persons. Salary not to be fixed by county court.

January 21, 1935.

1-22



Honorable J. B. Searcy
Prosecuting Attorney
Shannon County
Eminence, Missouri

Dear Sir:

This department acknowledges your letter of recent date wherein you state as follows:

"I desire an opinion of law on the following:

"Section 11811. Fees of county clerk in certain counties. -- Page 370 - Laws of Missouri, 1933.

"In said section will be found the following lines, 'in counties having a population of 7,500 and less than 10,000 persons, the clerks shall be allowed to pay for deputies and assistants \$900.00; in counties having a population of 10,000 and less than 11,500 persons, the clerks shall be allowed to retain \$1250 for themselves and not to exceed \$900 for deputy hire.'

"Shannon County comes under the last named clause.

"The first above mentioned clause states that the clerks mentioned therein shall be allowed to pay the sum of \$900.00 for deputy hire and the last mentioned states that said deputy hire cannot exceed \$900.00. By reading both together I believe that our County Clerk can pay his deputy \$900.00.

"In your opinion can the County Court of

Shannon County, Missouri, cut the salary of the Deputy Clerk of Shannon County, Missouri, under the sum of \$900.00 provided the Deputy and Clerk does not want same reduced."

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 Shannon County, according to the United States census of 1930, is 10894 inhabitants -- Official Manual of the State of Missouri, 1933-34, page 546.

Section 11811, Laws of Missouri, 1933, page 370, deals with fees of County Clerk in certain counties, and reads in part as follows:

"**** in counties having a population of 7,500 and less than 10,000 persons, the clerks shall be allowed to retain \$1100.00 for themselves, and shall be allowed to pay for deputies and assistants \$900.00; in counties having a population of 10,000 and less than 11,500 persons, the clerks shall be allowed to retain \$1250 for themselves and not to exceed \$900. for deputy hire; ****"

The statutory authority to appoint deputy county clerk in Shannon County is found in Section 11,680 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."

It will be noted from a reading of Section 11811, supra, that the county clerk of Shannon County "**** shall be allowed to retain \$1250.00 **** and not to exceed \$900.00, for deputy hire; ****". The county clerk is not only permitted to retain the above fees for his own personal services but also the fees allowed for the pay of 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 it is limited to an approval of the appointment and not as to salary.

In view of the foregoing, we are of the opinion that such sum as above permitted to be retained for deputy hire cannot be reduced by the county court.

Respectfully submitted,

JAMES L. HORENSTEL
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

MW/JLH:afj