

COUNTY COURT: Sec. 11812, R.S. Mo. 1929 confers on County Court complete control of appointment, compensation, and tenure of office of deputies and assistants to clerks of the circuit court.

4-18
April 18, 1935.



Hon. Clarence L. Shotwell,
Missouri Senate,
Jefferson City, Missouri.

Dear Senator Shotwell:

This department is in receipt of your letter of April 2 asking for an opinion as to the following state of facts:

"The County Court of St. Louis County have been urging me to have perfected and passed Senate Bill No. 116, which gives the County Court the right to limit the number of employees of the various county officers and also fix their compensation. I have told them that I thought they had that authority as far as the office of the Circuit Clerk was concerned under the provisions of Section 11812, R.S. Mo. 1929, as amended by the Acts of 1933, page 371. However, they claim that they are advised by their attorney or counselor that they have no such authority. Personally, I do not agree with the opinion they have received, but in order to get straight on the matter I would be glad if you would advise me at your earliest convenience as to the construction you place on the authority given them under said Section 11812."

Laws of Missouri, 1933, page 371 provides:

Sec. 11812, Laws of Mo. 1933, page 371 provides:

"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 general rule with respect to the authority conferred by reason of the power of removal granted to some officer or body is stated in 22 R.C.L., Sec. 84, page 433:

"Wherever under a constitutional or statutory provision the appointment is required to be made with the approval of some officer or body, such appointment must be approved before the person is legally entitled to the office."

In the case of Schulte v. City of Jefferson, 273 S.W. page 170, the Court said:

"(1) It is well settled - 'where the appointment is made as the result of a nomination by one authority and confirmation by another, the appointment is not complete until the action of all bodies concerned has been had, and the body which has been intrusted with the power of confirming appointments may reconsider its action before any action based upon its first decision has been taken.' 13 Cyc. p. 1372; Meachem's Public Office and Officers, Secs. 114, 124; 22 R.C.L. p. 433, Sec. 84."

CONCLUSION

Under Sec. 11812, supra, a clerk of the Circuit Court is entitled to appoint deputies and assistants, but may only do so with the approval of the County Court and may only appoint such deputies and assistants as "such courts shall deem necessary for the prompt and proper discharge of the duties of his office." The County Court is given the power to fix the compensation of the deputies and assistants and may at any time "modify or rescind its order permitting any appointment to be made and may reduce the compensation therefore fixed by it."

It would be difficult to conceive of language that could more strongly assert the intention of the Legislature that the County Court should have the complete control of the appointment, compensation and tenure of office of deputies and assistants to the clerk of the Circuit Court, and such is our conclusion with respect to the construction to be placed on Section 11812, supra.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.