

CLERK OF CAPE GIRARDEAU COURT OF COMMON PLEAS:

Compensation to be received after the first Monday in January, 1935.

January 25, 1935.

Hon. Elmer A. Strom
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Sir:

This will acknowledge receipt of a request for an opinion from Honorable S. P. Dalton, former Prosecuting Attorney of your county, which said request reads as follows:

"The Judge of the Cape Girardeau Court of Common Pleas, as well as the newly elected Clerk of that Court, have requested me to secure your opinion with reference to the question of whether or not the Clerk of the Cape Girardeau Court of Common Pleas will be on a fee basis after January 1, 1935, or will continue on a salary basis as it has been in the past. Apparently, the statute putting all of the circuit clerks on a fee basis does not apply to the Clerk of the Cape Girardeau Court of Common Pleas; however, this court is a circuit court for all purposes except as to criminal jurisdiction.

"All parties in interest desire the opinion of your office with reference to the matter at your earliest convenience."

Prior to the first Monday in January, 1935, the Clerk of the Circuit Court was paid a salary under the provisions

of Sections 11786 and 11813, R. S. Mo. 1929.

Section 11786, R. S. Mo. 1929, provides in part as follows:

"The clerks of the Circuit Courts of this state shall receive for their services, annually, the following sums: *** Provided, that in any county wherein the clerk of the circuit court is ex officio recorder of deeds, said offices shall be considered as one, for the purpose of this section: Provided, further, the provisions of this section shall not apply to any county which now contains or may hereafter contain a city of 75,000 inhabitants or more, or to any county which now contains or may hereafter contain 80,000 inhabitants and less than 150,000 inhabitants, in which circuit court is held in two or more places in said county; for the purpose of this section the population of any county shall be determined by multiplying by five the total number of votes cast in such county at the last presidential election prior to the time of such determination: ****".

The Clerk of the Cape Girardeau Court of Common Pleas under the provisions of Section 14509, R. S. Mo. 1929, was paid the same salary as the Clerk of the Circuit Court of Cape Girardeau County was paid under the provisions of Section 11786, supra.

Section 14509, R. S. 1929, provides:

"The clerk of the Cape Girardeau court of common pleas shall receive the same salary as is now or may hereafter be paid to the clerk of the circuit court of Cape Girardeau county; and said salary shall be paid out of the county treasury of Cape Girardeau county in monthly installments at the

end of each month, in the same manner as the salary of the clerk of the circuit court of said county."

Section 11786, supra, was superseded by Section 11786, Laws of Mo. 1933, page 369, which new section reads in part as follows:

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. ****; provided further, that clerks of the Circuit Court shall be allowed to retain, in addition to the fees allowed under this section, all fees earned by them in cases of change of venue from other counties; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

This office doubts seriously whether the clerk of the Cape Girardeau Court of Common Pleas is entitled to any compensation under the law as it now stands. It is a fundamental principle of law that a public officer must point to some statute authorizing his compensation if he is to receive any. Under the provisions of Section 14509, supra, the Clerk of the Cape Girardeau Court of Common Pleas is to receive the same salary as the Circuit Clerk of Cape Girardeau County, to be paid out of the county treasury in monthly installments, in the same manner as the Clerk of the Circuit Court of said county. Under the provisions of Section 11786, Laws of Mo. 1933, supra, the Circuit Clerk is no longer paid a monthly salary out of the county treasury but retains fees up to a certain amount in lieu thereof.

In the case of King v. Riverland Levee District, 218 Mo. App. 481, 1.c. 493, the Court said:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. (State ex rel. Evans v. Gordon, 245 Mo. 12, l. c. 27, 149 S. W. 468; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504.) Furthermore our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. l.c. 565, to the effect that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. (State ex rel. Evans v. Gordon, supra.)****"

It is plain, however, from a careful reading of Section 14509, supra, that the Legislature intended that the Clerk of Cape Girardeau Court of Common Pleas was to receive the same compensation as the Circuit Clerk of said county now receives or may hereafter receive; said compensation to be paid in the same manner as that of the Circuit Clerk.

The terms "fees" and "salary" have been held to be synonymous with the term "compensation". Callaway Co. v. Henderson, 119 Mo. l.c. 39; and State v. Riedel, 46 S. W. (2d) l.c. 133.

In our opinion, the only statute that the Clerk of Cape Girardeau Court of Common Pleas can point to allowing him any compensation for performing the services of his of-

Hon. Elmer A. Strom

-5-

1/25/35

office is Section 11786, Laws of 1933, page 369, supra.

It is, therefore, the opinion of this office that the Clerk of Cape Girardeau Court of Common Pleas shall since the first Monday in January, 1935, retain fees for his compensation not to exceed the amount the Circuit Clerk of Cape Girardeau County is allowed to retain under the provisions of Section 11786, Laws of Mo. 1933, page 369, and which fees shall be in lieu of the salary heretofore received.

Yours very truly,

JAMES L. HORNOSTEL
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JET/JLH:j