

CIRCUIT COURT REPORTERS - Salary determined by population
as ascertained by Sec. 11808, R. S. Mo. 1929 as
amended;

November 8, 1935.

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Honorable Edger B. Woolfolk
Circuit Judge
Troy, Missouri

Dear Judge Woolfolk:

This department is in receipt of your request for an opinion relative to the salary payable to the court reporter of your circuit for the years 1932, 1933 and 1934, and which request in part is as follows:

"There is a matter of controversy arising by reason of auditors' report recently made for Lincoln County, Missouri, as affecting the office of Court Reporter for Lincoln County, Missouri. The audit shows according to the opinion of the gentlemen auditing the account of Court Reporter for Lincoln County, that she has been overpaid (in his opinion) the sum of \$52.46 per year for the years 1932, 1933 and 1934.

"This audit comes as a matter of surprise, in view of the fact that within the last few years all the various counties in this Circuit have been audited; St. Charles in 1935.

"The law respecting the compensation of court reporters has been on our statute books for many years. I have been allowing court re-

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porters compensation for this circuit on \$2,500.00 basis, to be apportioned among the several counties, and a careful examination of the law seems to force the conclusion that the compensation of Court Reporters of the class of the 35th Circuit should be \$3,000.00. It seems a clear proportion to me that their salary is based on five times the vote cast at the last general election of 1930, which would place the Circuit in the Class of \$60,000.00, rather than the last decennial census. In this event the Court reporters for this Circuit are underpaid. The appointment of the Reporters in this Circuit was made Jan. 1, 1931, for the six year period.

" I much prefer, if this be a plain proposition, not to have any litigation respecting this matter. My Court Reporter for Lincoln County, through kindness of certain members of the bar, and with their aid, prepared a collation of authorities and history of the laws enacted concerning the subject matter involved, which she hands me, and which I enclose herewith for your convenience in reaching a conclusion of this matter."

The compensation of the court reporter for the years involved is fixed by the provisions of Section 11720, R. S. Mo. 1929, which, in part, provides as follows:

"Court reporter shall receive salary as follows: In cities, or counties which now have and such as may hereafter have a

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population of sixty thousand or more, an annual salary of three thousand dollars, * * In counties having a population of forty-five thousand and less than sixty thousand inhabitants, an annual salary of two thousand five hundred dollars, * * * Provided further, that where a judicial circuit is composed of more than one county, such salary shall be divided among the counties and be paid by them proportional as the population of such counties bear to the entire population of the circuit; * "

It is apparent that the term "counties," used in connection with the population figures, in the above statute, actually means circuits. This appears to have been the interpretation placed upon the above statute in *State ex rel. Geaslin v. Walker* (1924), 257 S. W. 470, and followed in *Graves v. Walker*, 23 S. W. (2d) 1107.

Therefore, from the above and foregoing, it is apparent that the salary of a court reporter is determined by the total population of the circuit, and when a circuit is composed of two or more counties, the total population of all the counties in the circuit determines the salary of the court reporter under Section 11720, R. S. Mo. 1929.

Section 11720, R. S. Mo. 1929 refers to the compensation of a court reporter as being "an annual salary." The term "annual salary" means nothing more than compensation for a full twelve months year; neither a monthly salary nor a calendar year's salary, but a salary based upon a full year immediately following the beginning of a particular term of office. Such is the holding in the *Linville* case (*State ex rel. v. Linville*, 300 S. W. 1066,) and followed by *Sims v. Clinton County*, 3 S. W. (2d) 69.

The term "annual salary" does not mean that the salary of a reporter is fixed at the time

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of the appointment for a period of six years. A county, during a term of office, may pass from one population class to another, thereby changing the amount of compensation. *State v. Hamilton*, 260 S. W. 466. Since under the express terms of Section 11720, R. S. Mo. 1929, the salary of a court reporter is paid in proportion to the county's population, every county in the circuit contributing toward the total salary according to its population, any change in the population of one county in a circuit would affect the amount of compensation the court reporter would receive from that county. Likewise, the population of a circuit may increase or decrease during the court reporter's term of six years.

Section 11808, R. S. Mo. 1929 fixes the method for determining the population of counties for the purpose of paying county officers at five times the highest number of votes cast at the last previous general election. This act was amended Laws Mo. 1933, p. 369 by fixing the population of counties by the last decennial census.

In *State ex rel. v. Walker*, 257 S.W. 470, the question of what method was to be used in determining the population of a circuit was not directly passed upon, but the court assumed that the proper method for determining the population of a circuit was the total actual population of the counties comprising that circuit. The *Walker* case was decided by the Supreme Court en banc.

In *State ex rel. v. Hoffman*, decided by the Kansas City Court of Appeals (1927), 294 S. W. 429, it was held that the official court reporter in a circuit consisting of one county, was a county officer for the purpose of fixing his salary.

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There is no conflict between the Geaslin and the Rucker cases. The sole question in the Geaslin case was: Is the amount of salary of court reporter governed by the total population of the circuit, or by the most populous county in the circuit? The court held it was governed by the total population of the entire circuit. What is now Section 11808, R. S. Mo. 1929 was not mentioned in said opinion, and therefore could not have been construed. The court, in support of its decision, concretely applied the ruling therein to the various circuits to reflect the results of their work, and in so doing merely took judicial notice of the census figures of the various counties.

There is no intimation in the opinion of how the population of a circuit is to be determined. The court's holding is limited to saying that the population of the circuit governs the amount of salary, that, "and nothing more." Such was the construction placed upon the court's opinion by the Kansas City Court of Appeals in the Rucker case. *State ex rel. Rucker v. Hoffman*, 249 S. W. 429. The Rucker case decided only one question, namely, the basis for calculating the population. The question centered around whether or not the census was to be used as the population, or whether the population was to be determined by multiplying the vote by five, as was provided in Section 11016, R. S. Mo. 1919 (Section 11808, R. S. Mo. 1929). The court said, l.c. 431:

"The prosecuting attorney, however, contends that this case is controlled by *State ex rel. Geaslin v. Walker*, 302 Mo. 116, 257 S. W. 470, and that there the Supreme Court held the federal census the proper basis upon which to calculate population. The question here was not before the court in that case. All the Supreme Court held was that:

'Where a judicial circuit is composed of more than one county the salary of a reporter shall be divided among the counties and be paid by them proportional as the population of such counties bear to the entire population of the circuit. And that in a judicial circuit composed of more than one county the salary of the court reporter is governed by the population of the circuit and not by the population of the most populous county therein.'

No other question was before the court, and no other question was decided. The basis of calculation was not involved, although both sides apparently submitted the question on the theory that the federal census controlled. This case is not in any sense an authority for the appellant in this case."

In the Rucker case, the court pointed out that a probation officer appointed by the circuit judge, and paid by the county, was a county officer.

In *Hasting v. Jasper County*, 232 S. W. 700, 1.c.c. 701, the court said:

"Our conclusion, from the foregoing, is that probation officers are public officers whose duties are created by law, are to be wholly performed within the limits of a county and for the benefit of the people of that county, and whose salaries are

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paid by the county court from the funds of such counties, and appellant is therefore a county officer (citing cases), as these words are used in section 11016, R. S. Mo. 1919, * * "

Section 11016, R. S. Mo. 1919 provided for the determination of the population for paying "county officers" upon a basis determined by five times the vote.

We may easily distinguish the cases, State ex rel. v. Imel, 242 Mo. 293, Greene County v. Lydy, 263 Mo. 77, wherein the courts have decided that the Probate Judge is not a county officer, from the present controversy, for the reason that the Probate Judge is a part and parcel of the judiciary, so created by Article VI of the Missouri Constitution, while county officers generally are created under the provisions of Article IX of the Constitution relating to counties, cities and towns.

The court reporter performs duties in the county, is paid from the county treasury, and the amount of such compensation is determined by the ratio the population of the county bears to the entire population of the circuit. The circuit court reporter is compensated as other county officers, and for the purpose of determining the population of the county, is a "county officer" within the meaning of Section 11808, R. S. Mo. 1929 and as amended.

The only provision made in the county budget act, designed to pay the full operating costs of the county, for the payment of salaries is in Class 4 (Laws Mo. 1933, p. 341), wherein the county court is required to set aside an amount sufficient to pay the salaries of "all county officers." The court reporter comes within this class and is paid from this class on the theory

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he is a county officer. The fact that a court reporter may perform similar duties in other counties of the circuit does not destroy his classification of being a "county officer."

While the prosecuting attorney is a county officer, some duties are imposed upon him which are to be performed in other counties. On changes of venue, the prosecuting attorney of one county prosecutes for the state in the county to which the case is sent; the reason being that the Legislature so decreed it. The performance of this decreed law in other counties does not destroy his classification of being a county officer. The same holds true of the circuit court reporter.

The Rucker case, supra, having specifically decided the question that a court reporter is a county officer, the duty of this office is to follow the law as written.

Having thus far decided that a court reporter is a "county officer" within the meaning of Section 11808, R. S. Mo. 1929 and as amended, we next pass to the question: What effect did the repeal of Section 11808, R. S. Mo. 1929 and the enactment of a new statute by the 1933 Legislature, have upon the salaries of the court reporter? It may be urged that under the awkward wording of the Linville case, supra, that the salary of the court reporter herein, at the time of his appointment in 1931, was fixed for the full six year agreement. Such is not the holding of the Linville case. Such a decision would lay down in this State a rule of law that a public officer, at the beginning of his term of office, acquires a vested right in the amount of compensation paid by that office which the Legislature would be without authority to change during his term.

In State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64, it was held that a public officer acquires no vested right to compensation fees for his office, but that such compensation is subject to legislative control. Therefore, when the Legislature repealed Section 11808, R. S. Mo. 1929, Laws

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Mo. 1933, p. 370, and substituted the decennial census in lieu of the five times the vote basis for determining the population of a county, the Legislature decreed a new basis for determining the population of counties for the purpose of paying salaries to county officers.

The Legislature of 1935, Laws Mo. 1935, p. 223, passed Section 11720-A relating to additional salaries for court reporters in circuits having a population of less than 45,000. Since a construction of that section is not involved herein, we pass the same without comment.

CONCLUSION.

It is, therefore, the opinion of this office that a court reporter is a "county officer," within the meaning of Section 11808, R. S. Mo. 1929, as amended; that the population of a circuit for the purpose of determining the amount of compensation a court reporter is entitled to receive, is determined by Section 11808, R. S. Mo. 1929 before and after the 1933 amendment; that the population of the county for the purpose of paying the court reporter prior to July 24, 1933 was determined by multiplying the vote by five; that since said date, the population of the county for the purpose of determining the salary of the court reporter is determined by the last decennial census.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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