

6 SUIT CLERKS: There is no statute at present time governing salary of Circuit Clerk of St. Louis County. Sec. 14563, R.S. Mo. 1929 cannot be made to apply.

May 19, 1936.

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Honorable C. Arthur Anderson,  
Prosecuting Attorney,  
St. Louis County,  
Clayton, Missouri.

Dear Sir:

This department is in receipt of your letter of May 6 wherein you inquire on behalf of Mr. Oscar H. Jacobsmeyer, Clerk of the Circuit Court of St. Louis County, as to the effect of the decision in the case of State of Mo. ex rel. Jacobsmeyer v. Thatcher, et al, recently decided by the Supreme Court, on Mr. Jacobsmeyer's salary.

In the last paragraph of the decision in this case, written by Judge Hays, there appear these pertinent sentences:

"Its parts are so mutually connected and interdependent as to warrant the belief the Legislature intended them as a complete whole, and we so regard them. We cannot legislate. Only the Legislature can correct its manifest oversight in failing to make some provision by law for compensating the clerk of the Circuit Court of St. Louis County."

Are we at liberty to say that the Supreme Court did not mean what it said? Most assuredly not. However, you call our attention to Section 14563, R.S. Mo. 1929, which may be pertinent to the question of Mr. Jacobsmeyer's salary on the theory that the Supreme Court did not mention the existence of such a statute at the time of the rendition of the Jacobsmeyer v. Thatcher decision.

Section 14563 is found under the caption of Hannibal Court of Common Pleas. It was evidently the intention of the Legislature to provide for the salary of clerks of courts of common pleas. The first portion of the statute appears to be a duplication of the original repealed sections 11808, 11786, 11820, et al, relating to the salaries and fees of circuit clerks.

Bearing in mind that Judge Hays in the Jacobsmeyer-Thatcher decision states that all sections relating to clerks of circuit courts are now consolidated into one new section - 11786, Laws of Mo. 1933 - we are of the opinion that Section 11563, R.S. Mo. 1929, in so far as it might have applied to the salaries of circuit clerks, has lost its potency by said repeal, and it is doubtful if it ever in any way affected or was applicable to the salary of circuit clerks other than to the clerk of the courts of common pleas. Irrespective of any prior affect it may have had, we think it has been repealed by the enactments of 1933.

In the case of State ex rel. Missouri Pac. Ry. Co. v. Public Service Commission of Missouri, 204 S.W. 395, it was held that where two statutes dealing with the same subject matter are in conflict so that both cannot be operative, the latter act will be regarded as a substitute for the former, and will operate as a repeal, although without a repealing clause.

To the same effect is the case of Maret v. Hough, 185 S.W. 544, wherein the Court said:

"When a law-making power enacts a new statute covering the whole subject-matter of prior laws on such subject and manifesting an intention to substitute the subsequent for the prior laws, then such prior laws are repealed."

In the case of State v. Stell, 14 S.W. (2d) 515, the Court enunciates this principle of law in the following language:

"Later act, covering whole subject of earlier acts, and plainly intended as substitute, operates as repeal by implication of former statutes."

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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