

COUNTY BUDGET ACT -- The juvenile clerk can receive compensation during 1937 only from surplus funds from the other classes; the circuit clerk cannot withhold fees to compensate him as juvenile clerk.

November 2, 1937



Honorable Lee Barham
Clerk of Circuit Court
Stoddard County
Bloomfield, Missouri

Dear Sir:

This department is in receipt of your letter of October 18, 1937, wherein you make the following inquiry:

"Would appreciate very much, having your opinion on the following, at your earliest convenience:

"Under Section 11814a, pages 447 and 448, Laws of Missouri, 1937, the Circuit Clerk is to receive a salary for his services as Clerk of the Juvenile Court, in addition to statutory compensation as Circuit Clerk, and in my county, it is a salary of \$500.00 per year, payable in monthly installments, and also, further in accordance with your opinion on this section heretofore made, the compensation for said services of Clerk of the Juvenile Court is and was to begin on September 6th, 1937.

"Now, how is one going to receive this monthly compensation for said services as Juvenile Clerk, if there is insufficient funds within the Budget to pay same? Due to the 1937 Budget having been made without any consideration or expectation of a salary for the Juvenile ex-officio Clerk, additional.

"Would it not be possible and legal to withhold the amount due and payable the Circuit Clerk as Juvenile Clerk, each month, out of the collections made and payable to the County? Until the end of this year, as there is nothing or insufficient funds in the Budget for this year to pay this monthly salary as Juvenile Clerk."

We are enclosing copy of an opinion rendered to Honorable G. Derk Green, Prosecuting Attorney of Linn county, which discusses the question that you present with reference to paying additional salary to the circuit clerk as clerk of the juvenile court, as it may be affected by the county budget act.

The only additional manner which we may suggest at this time is the fact that the Legislature liberalized the budget act by amending Class 5, Section 2, page 340, Laws Mo. 1933, so that it now reads as follows, Laws Mo. 1937, page 423:

"Class 5. The county court shall next set aside a fund for the contingent and emergency expense of the county, the county court may transfer any surplus funds from classes 1, 2, 3, 4 to class 5 to be used as contingent and emergency expenses. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

Therefore, in addition to what is contained in the opinion to Mr. Cain, if there is any surplus in Classes 1, 2, 3 and 4, the same may be transferred for contingent and emergency expenses. Whether or not this suggestion is of any value to you depends upon the financial condition of your county at this time.

With reference to the question as to whether or not you, as circuit clerk, could withhold from the fees derived from your office sufficient amount to compensate you as juvenile clerk, you are referred to Section 11814, Laws Mo. 1937, page 447:

" *** And monthly, such Clerks shall pay into the county treasury the amount of all fees collected by virtue of his office and every Clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law. It shall be the duty

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of the County Court to examine such monthly reports and to require of the Prosecuting Attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, etc. *** "

Section 11814a contains the statement that the compensation of the circuit clerk as juvenile clerk shall be "payable out of the county treasury at the end of each month in equal monthly installments in the same manner as salaries of such Circuit Clerks as provided under this Act."

In view of the above statutes, we are of the opinion that you could not legally withhold fees to compensate you as juvenile clerk, for the reason that it would be a violation of Section 11814, which makes the clerk liable on his official bond for all fees collected and not accounted for by him as provided by law. A similar situation was discussed, and holds to the same effect in the decision of State vs. Thatcher, 92 S. W. (2d) 641.

Respectfully submitted,

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APPROVED:

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