

COUNTY CLERKS: Deputy Clerks' pay in Nodaway County.

October 6, 1937. 10/9

Honorable Edison Blagg
County Clerk
Nodaway County
Maryville, Missouri



Dear Sir:

We acknowledge your request for an opinion dated September 9, 1937, which reads as follows:

"I would greatly appreciate an opinion from you in regard to a part of Section 11811, Laws of Missouri 1933, pages 370-371. Starting at line 20 on page 371 the part in question reads as follows: (Provided, that the county court in all counties in this state having a population of 15,000 and less than 40,000 persons may allow the county clerks to retain, in addition to the amounts herein specified, for deputies' or assistants' hire a further sum not to exceed \$500 per annum to be determined by the County Court of such county: Provided, that the County Court shall determine that the work required to be done by such clerk or clerks demand or require such extra remuneration and that the fees collected and taken in by such clerks is sufficient to pay the same but in no event shall any such allowance be made by the county court where the fees collected by such clerk is not absolutely sufficient to meet such demand,). The question that I would like to have answered is: Is there anything embodied in this part of Section 11811 that would prohibit the payment of the additional \$500.00 to a County Clerk's regular deputies provided, of course, that the County

Court saw fit to make such allowance by court order and that the fees taken in were sufficient to cover the same?

"Further I would like an opinion in regard to the same part of Sec. 11811, Laws of Missouri, 1937.

"I am hoping that you can find time to write an opinion on the above matter yourself. I have referred this question to three different attorneys here and they all feel that there is nothing to prohibit the payment of this \$500.00 to my regular deputies. However, I shall feel very much more secure if I can be guided by an opinion from your department."

Laws of Missouri 1933, p. 370, Section 11811, provide in part:

"The aggregate amount of fees that any clerk of the County Court under Article 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. * * * *; in counties having a population of 25,000 and less than 30,000 persons, the clerks shall be allowed to retain \$2300.00 for themselves, and shall be allowed to pay for deputies and assistants \$3000.00; in counties having a population of 30,000 and less than 70,000 persons, the clerks shall be allowed to retain \$2500.00 for themselves, and shall be allowed to pay for deputies and assistants \$3500.00; in counties having a population of 70,000 and less than 200,000 persons, the clerks shall be allowed to retain \$3000.00 for themselves, and

shall be allowed to pay for deputies and assistants \$5000.00; in counties having a population of 200,000 and less than 300,000 persons, the clerks shall be allowed to retain \$3000.00 for themselves, and shall be allowed to pay for deputies and assistants not exceeding \$16,000.00 in such of said counties where Court is held at more than one place, and in all other such counties they shall be allowed to pay for deputies and assistants not exceeding \$5000.00. Provided, that the county court in all counties in this state having a population of 15,000 and less than 40,000 persons may allow the county clerks to retain, in addition to the amounts herein specified, for deputies' or assistants' hire a further sum not to exceed \$500 per annum to be determined by the County Court of such county. * * *

By the last decennial census Nodaway County has a population of 26,371 inhabitants.

Statutory authority for appointing deputy county clerks for any county is found in Section 11680 R. S. Mo. 1929, which provides:

"Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least seventeen years of age and have all other qualifications of their principals and take the like oath, and may in the name of their principals perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies."

Your question is determinable by statutory construction of the two statutes above set out, and as a guide for statutory construction we find that Section 655 R. S. Mo. 1929 provides in part:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import;* * * *."

CONCLUSION.

The words and phrases used in Section 11811, and Section 11680, supra, should be given their ordinary and usual meaning.

In Section 11811, supra, the Legislature in providing compensation for deputy county clerks, speak of the "aggregate amount of fees that any clerk* * * shall be allowed to retain for any one year's service."

The only plausible construction of such language is, that out of fees collected by the county clerk in his official capacity, he shall retain or withhold in his custody such sums within the limitation set out in the section, to be used for services rendered.

The word "retain" as used in Section 11811, supra, eliminates the county as a possible debtor for deputy county clerk hire, and precludes any right of any deputy to receive or enforce compensation for services from the revenues of the county, binding all deputies to look only to the retainer in the hands of the county clerk for their pay. County warrants are not to be used to pay for the services of any deputy county clerks, prior to September 6, 1937.

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Section 11680, supra, provides that the County clerk appoint deputy county clerks, as a part of their prerogative, same to be approved by the County Court.

Section 11811, supra, provides for a retainer of \$3000.00 for deputy hire in counties the size of Nodaway County, and in the same section provides for an additional sum for deputy hire "not to exceed \$500.00", which additional sum is left up to the sound discretion and record order of the County Court, the Legislature not intending that the county clerk be handicapped for lack of help.

Construing Section 11811, supra, we are of the opinion that where the County Court, in its sound discretion, has ordered the county clerk of Nodaway County to retain from his collected fees an additional sum of \$500.00 for necessary deputy clerk hire, then in that case the county clerk was entitled to \$3500.00 as a total retainer to be expended for clerk hire. Without such an order of the County Court, the county clerk was entitled to only \$3000.00 as a total retainer to be expended for clerk hire.

On September 6, 1937, a new law went into effect whereby compensation of the county clerk and his deputies, for services rendered, became from that date on a charge against the county and not a charge against the retainer in the hands of the county clerk, and the new law provides further that compensation for services are payable in monthly installments by monthly warrants drawn on the county. (See Laws of 1937, p. 440, Section 11811.) Outside of this charge we interpret the Laws of 1937 with the same interpretation as we have given herein to Section 11811 in the Laws of 1933.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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