

SALARIES AND FEES:

CIRCUIT CLERKS: County Court is authorized to fix the number and compensation of deputies to the Circuit Clerk, and the Clerk must abide thereby

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Honorable Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

We are in receipt of your inquiry, which is as follows:

"Will you please give me a ruling on the following situation?"

"In our County the offices of Circuit Clerk and Recorder are combined. There is a Deputy Circuit Clerk who works in the Circuit Clerk's office and the Circuit Clerk and Recorder ex officio spends the majority of his time in the Recorder's office. This Circuit Clerk is now requesting the County Court to furnish him another full time Deputy to stay in the Recorder's office. The Court agreed to allow him an additional \$500.00 for clerk hire but he contends that such is not a sufficient amount and is endeavoring to compel the Court to pay the person whom he has employed \$1200.00. The Court has refused to do this. It seems to me that from this law it is clear that the Circuit Clerk can appoint his Deputy but the amount of the

salary is set by the County Court.
Please give me an official ruling."

Section 11528, Laws of 1933, page 360, provides:

"The clerks of the circuit courts shall be ex officio recorders in their respective counties, except in counties containing 20,000 inhabitants or more."

By the last Federal census the population of Pike County is 18,001 and it follows that the clerk of the circuit Court is exofficio recorder in Pike County.

Section 11786, Laws of 1933, page 370, dealing with salaries and fees of circuit clerks and their deputies, states:

"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."

However, it further provides that the circuit clerk may retain, in addition to the fees allowed under that section, all fees earned by them in cases of change of venue from other counties. It fixes the salary of the clerk of the circuit court in counties having a population of 17,500 and less than 20,000 persons at the sum of \$1900.00 per year.

Section 11812, Laws of 1933, page 371, provides, with reference to the deputies and assistants for the circuit clerk, in the following way:

"Every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the county court, as such court shall deem necessary for the prompt and

proper discharge of the duties of his office. The County Court, in its order permitting the clerk to appoint a deputy or assistant, shall fix the compensation of such deputy or assistant which, in counties having 12,500 persons and less, shall not exceed the amount allowed deputy or assistant to the county clerk for the actual time employed and shall designate the period of time such deputy or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it."

Section 11814 requires the clerk of the circuit court to quarterly pay into the county treasury the amount of any fees collected in excess of the sums permitted to be retained for services and pay of deputies and assistants, and places liability on his official bond for all fees collected and not accounted for by him as provided by law. By the terms of Section 11812, supra, it appears that the Legislature has left to the wisdom and discretion of the county court the authority and duty to determine the number of deputies and assistants that the clerk of the circuit court is authorized to employ, and has likewise left the authority lodged in the county court to fix the compensation of such deputies. The Legislature has provided as to counties of 12,500 and less a maximum amount that may be paid out as compensation to deputies, but the maximum amount has not been designated by the Legislature as to counties having a

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population of more than 12,500 persons, the amount of money therefore required being left to the wisdom of the county court. In order that no mistakes or misunderstandings arise with reference thereto the Legislature likewise made a safeguard, in the following, in providing that the county court should enter of record their order fixing the deputy hire and a certified copy thereof is required to be filed in the office of the county clerk. Discretion is lodged in the clerk of the circuit court to discharge any deputy at any time he sees fit and also to regulate the time of his employment; likewise, the county court is left with the residual authority to at any time modify or rescind its order permitting any appointment to be made or to reduce the compensation theretofore fixed by it for such deputy.

CONCLUSION

It is our opinion that the county court of Pike County is authorized to determine and fix the amount of compensation payable to the deputies in the office of circuit clerk and recorder, and that the clerk of the circuit court does not have authority to compel the court to pay deputies in his office a greater amount than the county court sees fit to authorize.

Very truly yours,

WM. ORR SAWYERS,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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