

COUNTY CLERK:

Under the statutes is entitled to retain only \$1700.00 per annum for himself. On failure to pay maximum amount deputies or assistants may receive under the statute, Clerk cannot retain difference for himself.

December 14, 1937.

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Honorable John C. Pope  
Prosecuting Attorney  
Webster County  
Marshfield, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of November 20th, wherein you make the following inquiry:

"Under Section 11811 R. S. 1929 and Laws 1933, page 369, the county clerk of our county is entitled to retain the sum of \$1,700.00 for himself and pay to his deputies and assistants the further sum of \$1,600.00.

"In our county the Clerk has been drawing the sum of \$166.66 and paying his deputy the sum of \$108.00, thereby using the total amount of \$3,300.00, the total yearly allowance to both.

"In your opinion, can the clerk legally draw more than \$1,700.00 for himself by reducing the amount of his deputy and assistant hire."

Section 11811, referred to in your letter, page 370, Laws of Missouri, 1933, from which the pertinent part is as follows:

"The aggregate amount of fees that any clerk of the County Court under Articles 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 15,000 and less than 17,500 persons, the clerks shall be allowed to retain \$1700.00 for themselves, and shall be allowed to pay for deputies and assistants \$1600.00; \* \* \*"

The above section was repealed and reenacted by the 59th General Assembly, Laws of Missouri, 1937, page 441, but makes no material change in the salaries or does not affect the question which you present, and hence we merely refer to it without quoting any of its provisions.

Under Section 11810, R. S. Mo. 1929, the clerk of the county court has certain duties with respect to making quarterly returns. Said section reads in part as follows:

"Every clerk of a court of record in every county in this state shall make return quarterly to the county court of all fees by him received to date of return, from whom received and for what services, giving the amount of each fee received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit. Such statement shall include all fees for all services of whatever character done in his official capacity, giving the name of each deputy or assistant, the length of time each was employed, and the amount of money paid to each. The county court shall at each regular session examine such statement, and may examine any person as to the truth of the same, and allow all necessary clerk or deputy hire, not exceeding the amount allowed in the next succeeding section of this chapter for deputies or assistants, and deduct the same from the

aggregate amount received by the clerk, and if there be an amount still in the hands of the clerk exceeding the sums specified in the next section succeeding, the court shall ascertain the amount of such excess over and above the amounts allowed to be retained by the clerk and paid to deputies and assistants, and make an order directing such clerk to pay the amount so ascertained into the county treasury: \* \* \* \* \*

We call your attention to the fact that the statute uses the words, "and of the salaries by him actually paid to his deputies or assistants." We think, clearly, that Section 11811, supra, is a limitation of the maximum amount that a county clerk can retain and that the said section contains also the maximum amount which can be paid to deputies.

In the decision of *Holman v. City of Macon*, 155 Mo. 398, l. c. 402, the court follows the legal principal to the effect:

" A recognized rule of statutory construction is that a public officer cannot demand any compensation for his services not specifically allowed by statutes and that statutes fixing such compensation must be strictly construed."

There are many other decisions to like effect.

Conclusion.

The compensation of an officer is a matter of statute, not a contract, and is incidental to the office. An officer assumes an office, accepts the terms of the

statute governing the salary or remuneration he is to receive, and if the statutes fix the maximum salary that is all the salary that he is legally entitled to receive, and merely because the statute gives to him the right to pay the deputies or assistants \$1600.00 it does not give him the legal right to thwart the purpose of the statute and receive more compensation than is provided by said statute.

Therefore, the Clerk is entitled to retain only \$1700.00 per annum for himself personally, under the facts and statutes which you present to us. If he does not pay the deputies or assistants the maximum amount which said deputies or assistants may receive under the statute, the difference should be paid into the county treasury instead of being retained by the Clerk himself.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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