

COUNTY CLERK: Compensation of County Clerk and Deputies
in Osage County and how paid.

January 25, 1937.



Honorable L. L. Robinson
Presiding Judge of the County Court
Chamois, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
January 15, 1937, which reads as follows:

"May I have an interpretation or
opinion of the law relating to the
fees of County Clerks.

"The last previous decennial census
of the United States gives Osage
County a population of 12,432 and
under the 1933 Session Acts, Sec.
11811. Fees of county clerks in
certain counties.- which reads as
follows:- In counties having more
than 11,500 persons and less than
12,500 persons, the clerks shall be
allowed to retain \$1300.00 for them-
selves, and shall be allowed to pay
for deputies and assistants \$1100.00;

"Now the point on which I am asking
your opinion is this, is it right
and proper for the County Court to
issue a warrant to the county clerk,
drawn on the general revenue of the
county, warrant to be drawn the first
of each month for twelfth of the
\$1100.00 which he is allowed to pay
his deputies, and if allowed, should
the county clerk enter it in his fee
bill as an accountable fee.

"Under Sec. 11781 R. S. 1929. The
fees which are allowed a county clerk
for his services are set forth but
no mention is made of this fee or
salary allowed for his deputies.

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

"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 more than 11,500 persons and less than 12,500 persons, the clerks shall be allowed to retain \$1300.00 for themselves, and shall be allowed to pay for deputies and assistants \$1100.00; * * * *."

Statutory authority for appointing deputy county clerks in Osage County is found in Section 11630, 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."

As to the statutory construction of legislative acts, the Legislature has provided in Section 655, R. S. Mo. 1929, the following:

"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 appro-

priate meaning in law shall be understood according to their technical import; * * * *."

CONCLUSION.

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

In Section 11811, supra, the Legislature in providing the compensation of deputy clerks spoke 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 the fees collected by the county clerk, in his official capacity, he shall be allowed to withhold or retain from the money in his custody and possession enough to take care of his salary and the compensation of his deputies. The Legislature used the word "retain" and hence there is no indication that the county court is empowered to create an obligation against the county by issuing county warrants for deputy clerk's service. The use of the word "retain" eliminates the county as a possible debtor for deputy hire and precludes any right of a deputy to receive and enforce compensation for services from the county.

We are of the opinion that in Osage County, the county clerk is allowed to retain \$1300.00 of collected fees for himself and \$1100.00 of collected fees for his deputy. It is true that under Section 11680, supra, the county court must approve the appointment of deputy county clerks. As to the payment of compensation to deputy county clerks, there is not one word in the Statutes that would authorize the county court to issue county warrants against the county's general revenue fund in payment of compensation of any deputy county clerk's service. To draw valid warrants on the county treasury, the county court must find some authority of law, or the county will not be bound. *Wolcott v. Lawrence County* 26, Mo. 272.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

J. E. TAYLOR
(Acting) Attorney General.