

COUNTY CLERKS: Section 11811, as amended, Laws of Missouri, 1933, page 370, does not provide for a definite stated salary for each deputy or assistant county clerk.

December 23, 1938.

12-24  
FILED

Honorable D. E. Abernathy  
Deputy County Clerk  
Perryville, Missouri

Dear Sir:

We have received your letter of December 13, 1938, which reads as follows:

"On January 1, 1935, I was appointed Deputy County Clerk of Perry County, Missouri, and, at that time, was paid a salary of \$75.00 per month. This salary was below what was allowed by Statute for counties of the class of Perry County for Deputy County Clerks. I entered protests from time to time, for as far as I could ascertain no other County in the State was paying less than \$1,300.00 per year, the Statutory allowance for counties of that class. I was paid this salary, under protest, until the law putting County Clerks on a salary became effective, when I was allowed a salary on the basis of \$1,300.00 per year.

"In your opinion, can I present a claim for back salary from January 1, 1935, to the date the new law became effective in 1937, the date I began receiving \$1,300.00 per year?

"There is no disagreement with the County Court over the matter and I am of the opinion the Court will be guided by your ruling. I shall appreciate hearing from you at your earliest convenience."

You state that you were appointed deputy county clerk on January 1, 1935, and was paid a salary of \$75.00 per month until the "new law became effective in 1937;" that this salary was "below what was allowed by statute for counties of the class of Perry County for deputy county clerks."

We have not found any statute which sets any particular "salary" for deputy county clerks. At the time you were appointed, Section 11811 as amended and contained in the Laws of Missouri, 1933, page 370, was in force and effect. Since the population of Perry County, as shown by the 1930 decennial census is 13,707, the applicable parts of Section 11811, as amended in 1933, reads 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 herein-after set out. \* \* \* in counties having a population of 12,500 and less than 15,000 persons, the clerks shall be allowed to retain \$1500.00 for themselves, and shall be allowed to pay for deputies and assistants \$1300.00; \* \* \*"

It will be observed that the county clerks were allowed to pay \$1300.00 "for deputies and assistants." The words "deputies" and "assistants" were used in the plural. The statute does not say that any particular deputy or any particular assistant shall receive \$1300.00 or any other specific sum annually. The statute also does not say that if there should be only one deputy or assistant, such deputy or assistant should receive \$1300.00 annually. If the county clerk should have had more than one assistant or more than one deputy, it would have been impossible to give each of them an annual salary of \$1300.00 out of the fees he was allowed to retain by statute for such purpose, since that is the total amount the clerk was authorized to retain and pay for all of his deputies and assistants.

As stated by the Supreme Court in the case of Ward v. Christian County, 111 S. W. (2d) 182, 183, the court said:

"It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed.' State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S. W. 655, 656."

Whether Section 11811, as amended in the year 1933, be strictly or liberally construed, we cannot read it to the effect that any deputy or assistant of the county clerk is entitled to a definite and stated salary. Any such deputy might have been paid the maximum amount allowed by law for such purpose, but the statute did not set the salary at any given amount.

We have confined ourselves in this opinion to the effect of Section 11811, as amended by the 1933 Legislature, and we have made no attempt to construe the meaning and effect of the same act as passed by the Legislature in the year 1937. We take it from your letter that your difficulty arises solely in connection with the effect of the 1933 law.

#### CONCLUSION

Under the terms of Section 11811, as amended by the Laws of Missouri, 1933, page 370, deputy county clerks are not entitled to a definite stated salary. In connection with Perry County, Missouri, the county clerk was allowed "to pay for deputies and assistants \$1300.00." This amount, however, appears to be the total amount to be

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paid to all deputies and assistants which the county clerk might have, and that no particular deputy or assistant could claim that he was entitled to such entire sum as a matter of law.

Respectfully submitted

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

JFA:HR