

CLERK OF THE HANNIBAL COURT OF COMMON PLEAS:

Is entitled to added compensation as Clerk of the Juvenile Division, and such compensation should be based upon the population of Marion County

April 14, 1938

Mr. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Mr. Stillwell:

This will acknowledge receipt of your request for an opinion from this Department under date of March 31, 1938, where, in your letter, you state as follows:

"Question has arisen as to the right of the Clerk of the Hannibal Court of Common Pleas to claim added compensation for the duties performed by him as Clerk of the Juvenile Division of the Hannibal Court of Common Pleas. The provision for added compensation for such duties performed by Clerks of Circuit Courts is found in Section 11814a, Laws of Missouri, 1937, page 447. Section 14563 R. S. Mo., 1929, provides that the Clerk of the Hannibal Court of Common Pleas shall be paid an annual salary of Two Thousand Dollars (\$2,000.00). Section 656 provides that in certain instances the term 'Circuit Court' when used in any law general to the whole state, shall be construed to include Courts of Common Pleas. My Question is:

"1. Is the Clerk of the Hannibal

Court of Common Pleas entitled to the added compensation for the Juvenile duties?

"2. If this be answered in the affirmative should this salary be based upon the population of Mason and Miller Townships which comprise the territory over which this court has jurisdiction, or the County as a whole?"

Answering the above two questions, in order, we say as follows:

I

Approaching your questions we will say at the outset it seems reasonably clear that the Hannibal Court of Common Pleas being a court having general jurisdiction, within its territorial limits, in all civil and criminal actions to the same extent as are exercised by the circuit courts of the State, such courts of common pleas have jurisdiction of cases concerning the treatment and correction of delinquent minors as provided for in Article IX, Chapter 12, Revised Statutes of Missouri 1929, because by reason of the nature of such cases they are handled in the Juvenile Division of the court, or, as named in Section 14162, Revised Statutes Missouri 1929, the "Juvenile Court."

Section 656, Revised Statutes Missouri 1929, provides as follows:

"Whenever the term 'circuit court' is used in any law general to the whole state, the same shall be construed to include 'courts of common pleas,' unless such construction would be inconsistent with the

evident intent of such law, or of some law specially applicable to courts of common pleas."

The aforesaid section, 14162, makes it the duty of the clerks of the several circuit courts of the state to act as clerk of the juvenile court; by reason of the provisions of Section 656, aforesaid, the term 'court of common pleas' is synonymous with and construed to mean 'circuit court', or vice versa. In this connection the St. Louis Court of Appeals, in the case of Bell v. Walkley, 27 S. W. (2d) 456, had before it a contention that the Louisiana Court of Common Pleas had no authority or jurisdiction to hear and pass on the writ of injunction in view of the statute seemingly limiting jurisdiction in the case of injunctions to the circuit court. The Court of Appeals arrived at the conclusion that said Common Pleas Court did have jurisdiction by applying the right of interchange of the terms "circuit Court" and "courts of common pleas" under Section 7059, Revised Statutes Missouri 1919 (now Section 656, Revised Statutes Missouri 1929). The Court said, page 457, as follows:

"Section 7059, Rev. St. of Mo. 1919, provides that: 'Whenever the term "circuit court" is used in any law general to the whole state, the same shall be construed to include "courts of common pleas," unless such construction would be inconsistent with the evident intent of such law, or of some law specially applicable to courts of common pleas.'

"And since section 1947, Rev. Stat. of Mo 1919, provides that an injunction may be granted by the circuit court of judge thereof in vacation, and by the county court or any two judges thereof in vacation, it readily ap-

pears that the judge of the Louisiana court of common pleas has jurisdiction to issue the preliminary writ of injunction in vacation made returnable to the Louisiana court of common pleas. We therefore hold that the chancellor properly ruled defendant's plea to the jurisdiction."

Hence, it is the duty of the Clerk of the Hannibal Court of Common Pleas to act as, and he is, the Clerk of the Juvenile Division of the Hannibal Court of Common Pleas.

With the above outline as to jurisdiction of your court and the duty of the clerk in connection therewith, as a premise, we turn to the section you mentioned, namely, Section 11814a, Laws of Missouri 1937, as determinative of the question as to added compensation, if any, to your clerk.

We here quote the pertinent part of Section 11814a, as follows:

"For their services as Clerks of the Juvenile Courts, also known or designated as the Juvenile Division of the Circuit Court, the Clerks of the Circuit Courts in all counties containing less than fifty thousand inhabitants shall receive and be paid an annual compensation as follows:
* * * * "

It is to be noted, first, that this section names clerks of the juvenile courts; hence, if we are correct in our premise aforesaid that the Hannibal Court of Common Pleas acts as a Juvenile Court in handling cases of neglected and delinquent

minors, it follows that your clerk, acting as he does, or should, as Clerk of the Juvenile Court, comes within the plain provisions of said Section 11814a as to compensation therefor.

Furthermore, by reason of the provisions of Section 656 aforesaid, the term "Circuit Court," as and where set forth as shown in Section 11814a aforesaid, can or should be read in this instance as "Court of Common Pleas"; the clerk of your court would come within the provisions of Section 11814a and be entitled to compensation therein provided for.

In reaching the conclusion above, so far as it concerns the interchanging of the terms "circuit court" and "courts of common pleas" we are mindful of the concluding language in Section 656, to-wit:

"unless such construction would be inconsistent with the evident intent of such law, or of some law specially applicable to courts of common pleas."

The provisions of law creating the Hannibal Court of Common Pleas and duties and compensation of the clerk thereof were enacted long before the juvenile law was ever heard of, and, in fact, the duties and compensation of the clerks of the circuit courts were likewise prescribed long before the juvenile law was known. The additional compensation provided for clerks of juvenile courts and circuit courts is merely an added provision in their behalf, and is in nowise inconsistent with any prior provision of law respecting their duties or compensation as clerks of circuit or juvenile courts. It nowhere appears in Section 14563, relative to the compensation of circuit clerks and the clerk of the Hannibal Court of Common Pleas, that it was the intention of the legislators that the compensation of the Clerk of the Hannibal

Court of Common Pleas should be confined or limited to \$2,000.00 and no more, regardless of any added duties or change in conditions.

Although it is possible, of course, that a claim might be made that there is inconsistency between the several sections of the statutes hereinabove set forth, so far as said interchange of terms is concerned, we call attention to the rule of statutory construction under such circumstances as set forth in Little River Drain. Dist. v. Lassater, 325 Mo. 1. c. 500, wherein the Court said:

"It is the duty of courts, in construing two or more statutes relating to the same subject, to read them together and to harmonize them, if possible, and to give force and effect to each."

Hence, we say that in view of the circumstances and the aforesaid rule of statutory construction, there can not be found anything inconsistent in applying the provisions of Section 656 as to interchange of terms, as aforesaid, in conjunction with Section 11814a and the further statutes applicable to juvenile courts and the Hannibal Court of Common Pleas.

II

Relative to your second question, it is to be noted that the added compensation under Section 11814a is determined upon a population basis, and this is based on the population of the county and not any fractional part thereof. Consequently, the Clerk of the Hannibal Court of Common Pleas as Clerk of the Juvenile Court, or as standing in the shoes of a Clerk of the Juvenile Division of a circuit court, is entitled to have the population of

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Marion County as a whole considered in arriving at the basis of the additional compensation to which he is entitled.

However, in turning to the census report for 1930 we find that the total population of Marion County was or is 33,493, whereas, the population of Hannibal alone, and without taking into consideration any additional population of Mason and Miller Townships, is 22,761.

Section 11814a provides compensation of \$500.00 to the clerk for the juvenile work in all counties having a population of 17,500 and less than 50,000. Consequently, it appears immaterial, at least from a practical standpoint, whether or not the population of the entire county, or that of Mason and Miller Townships, is taken as the basis, because in either event the same results would be arrived at.

CONCLUSION

I

The Clerk of the Hannibal Court of Common Pleas is entitled to the compensation provided for in Section 11814a, as Clerk of the Juvenile Court, or as Clerk of the Juvenile Division of the Hannibal Court of Common Pleas.

II

The compensation as such Clerk should be based upon the population of Marion County.

Respectfully submitted

J. W. BUFFINGTON
Assistant Attorney General

APPROVED

J. E. TAYLOR
(Acting) Attorney General

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