

SALARIES AND FEES: Clerk of the Circuit Court of Jackson County may retain fees in payment of his salary.

9/16
September 16, 1939



Honorable William Goodman
Assistant Attorney General
2301 Fidelity Building
Kansas City, Missouri

Dear Sir:

We have yours of the 13th in which you state that you have a letter from Mr. B. T. Flannery, Clerk of the Circuit Court of Jackson County, pertaining to the salary of the Clerk of the Circuit Court of that county.

At the time this matter was under consideration, General McKittrick had the undersigned to make some research on the question and, as I remember, the question which was submitted was whether or not the Clerk of the Circuit Court of Jackson County was authorized to retain fees collected by him as such officer in payment of his salary, or was he required to turn these fees into the county treasury and then be paid by a warrant issued on the order of the County Court.

In our research on this question, we find that the salary statutes as they apply to the clerks of the circuit courts of the various counties of the state have been changed and amended, and it is difficult to determine just to what counties some of these sections apply. The last amendment of the salary statute as it applies to clerks of the circuit courts will be found in Laws of Missouri, 1937, at page 445, Section 11786. However, referring to this section, it will be seen that the highest bracket in which a county may fall in order to come within the provisions of this section is one containing a population of 125,000 and less than 400,000. Referring to the 1930 census, we find that Jackson County had a population of 470,454 in that year. Tracing back through the statutes which have been amended and leading up to the present circuit clerk act

of 1937, supra, we do not find that counties of the population of Jackson County have been within those classes.

Having failed to find a general statute applicable to counties of the population of Jackson County, we have searched through the Revised Statutes and find a special statute which we think applies to that county, that is, Section 11820, R. S. Mo. 1929, which is as follows:

"In all counties and cities not within the limits of a county having a population of three hundred thousand inhabitants or more, or such as may hereafter have three hundred thousand inhabitants or more, the clerk of the circuit court of such county or city may retain, out of the fees received by him as such clerk, an amount not exceeding the sum of five thousand dollars per annum for his services as such clerk."

This section, together with Section 11821, was what was Section 3271 of the Revised Statutes of 1889. In other words, both of these sections were in one section at that time, however, they have been changed some in the wording since the 1889 revision. It will be noted that Section 11821, R. S. Mo. 1929, applies to counties, and cities not within the limits of a county, having a population of 500,000 inhabitants or more, so that Section 11820, even though it says that it applies to counties having a population of 300,000 inhabitants or more, does not apply to the cities and counties referred to in said Section 11821, that is, those which have over 500,000.

With this explanation in mind, we think that since Jackson County has the aforesaid population, and since it is not within the class mentioned in Section 11821, that is, that it has a population of 500,000 or over, then it comes within the classification of Section 11820, supra. It will be noted that Section 11820 authorizes the clerk of the circuit court to retain out of the fees received by him as such clerk an amount not exceeding the sum of five thousand dollars per annum for his services as such clerk. This statute is plain

and unambiguous and we do not think that it is necessary to apply any other rules of construction in order to determine what it means.

CONCLUSION

From the foregoing, it is the opinion of this department that the Clerk of the Circuit Court of Jackson County, Missouri, may retain out of the fees received by him as such clerk an amount not exceeding the sum of five thousand dollars per annum for his services as such clerk.

Respectfully submitted

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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