

COURTS OF RECORD: Under Section 11772, p. 679, Laws of
Missouri 1939, a circuit judge holding
PROBATE JUDGE: court in two or more counties is entitled
to \$1300 salary as jury commissioner, and
a probate judge may retain as part of his
fees up to the amount of \$1300 in addition
to the other salary allowed circuit judges.

August 23, 1940 9/3

Hon. Edwin C. Orr
Prosecuting Attorney
Boone County
Columbia, Missouri



Dear Sir:

We are in receipt of your request for an
opinion, under date of August 21, 1940, which
reads as follows:

"You will recall that the last
session of the legislature
raised the pay of the Circuit
Judges. Prior to this last
hike the Probate Judge's pay
was determined by the fees col-
lected by the Probate Judge's
office and his total pay could
not exceed the amount of the
Circuit Judges total income.
Since the pay of the Circuit
Judge was increased, is the
Probate Judge entitled to the
increase in his salary, provid-
ing of course the office earns
sufficient fees to pay the in-
crease.

"I have not had an opportunity
to brief this question myself,
however, I can see that the
point is going to be raised in
this county and I would like the
benefit of an opinion from your

office as to the maximum pay that the Probate Judge is entitled to under the present statute, and would like your opinion as to whether or not the statute which increased the pay of the pay of the Circuit Judges, automatically increased the maximum amount of fees collected which the Probate Judge may retain as his pay. I will be grateful to you for an opinion on these questions at your earliest convenience."

Section 11765, R. S. No. 1929 reads as follows:

"For their services as judges of the juvenile courts, also known or designated as the juvenile division of the circuit courts, the judges of the circuit courts in all counties containing less than fifty thousand inhabitants shall receive and be paid an annual compensation of fifteen hundred dollars, payable out of the state treasury at the end of each month in equal monthly installments and in the same manner as salaries of such circuit judges are now paid."

Section 11766 provides that the fifteen hundred dollars allowed under Section 11765 as salary to the circuit judge acting as juvenile judge should be considered as additional salary to that which is generally allowed as salary of the circuit judge.

Section 11767 partially reads as follows:

"The officers of state shall receive for their services, annually, the following sums: First, the governor, the sum of five thousand dollars;

second, the judges of the supreme court, each four thousand five hundred dollars; third, the judges of the circuit courts, each, two thousand dollars; * * *

Under the above section the general salary, under the general law, of a circuit judge is two thousand dollars.

Section 11771, R. S. Mo. 1929, reads as follows:

"Every judge of a circuit court or of a criminal court in this state shall be allowed and paid the sum of one hundred dollars per month as and for his expenses incident to the holding of all regular, special or adjourned terms of court at any place in his circuit other than the place of his residence therein, and such sum of money for said expenses shall be paid out of the state treasury monthly in the same manner that the salaries of circuit judges are now paid by law; provided, that this section shall not apply to circuits in cities of this state containing over 300,000 inhabitants nor to circuits consisting of one county only: Provided further, that in circuits which consist of one county only and not containing a city of 300,000 inhabitants or over, but in which court is held in more than one place, this section shall apply."

Under the above section the sum of twelve hundred dollars per year is allowed every circuit judge, or judge of a criminal court, for his expenses incident to the holding of court at any place in his circuit other than the place of his residence. This is not considered

as part of his salary and it was so held in Macon County v. Barnett R. Williams, 284 Mo. 447, 224 S.W. 835.

Section 11772, Laws of Missouri 1939, page 679, reads as follows:

"In all counties in this state which now constitute, or may hereafter constitute, a separate judicial circuit with only one judge of the circuit court therein, the judge of such circuit court is hereby constituted a jury commissioner, whose duties as such commissioner shall be to assist the county court to prepare jury lists and to draw names as provided for in Sections 8754 and 8755, Revised Statutes 1929. Each such jury commissioner shall, as compensation for his services as jury commissioner solely, as provided in this section, receive a salary of twelve hundred dollars per annum, said salary to be paid by the county in equal monthly installments. In all judicial circuits in this State which circuits are constituted of two or more counties the circuit judge is hereby constituted a jury commissioner charged with the powers and duties herein prescribed, and for the performance of said duties he shall receive a salary of \$1300.00, per annum, to be paid in equal monthly installments out of the State Treasury."

This new section repealed 11772, R. S. Mo. 1929, and added an additional payment of thirteen hundred dollars to the salary of a circuit judge where he acted as jury commissioner in two or more counties.

The population of Boone County, according to the 1930 Federal Decennial Census was 30,995. Boone County is in the 34th Judicial Circuit, which consists of Boone

County and Callaway County. Under all of the above sections concerning the compensation of a circuit court judge who sits in a judicial circuit consisting of two counties, his compensation should be as follows:

First: salary as juvenile judge fifteen hundred dollars (Sec. 11765, supra). Second: salary as circuit judge two thousand dollars (Sec. 11767, supra). Third: salary as jury commissioner thirteen hundred dollars (Sec. 11772 Laws of Missouri 1939, page 679, supra). And fourth: the amount allowed as expenses in the amount of twelve hundred dollars (Sec. 11771, supra). Being a total compensation of six thousand dollars.

Section 11782, R. S. Mo. 1929, partially reads as follows:

"* * * Provided further, that whenever, after deducting all reasonable and necessary expenses for clerk hire, the amount of fees collected in any one calendar year by or for any one probate judge in any county in this state, during his term of office, and irrespective of the date of accrual of such fees, shall exceed a sum equal to the annual compensation in the aggregate from all sources and for all duties by virtue of the office, except the \$1,200.00 allowed for expenses when holding circuit court in other counties, provided by law for a judge of the circuit court having jurisdiction in such county, then it shall be the duty of such probate judge to pay such excess less ten per cent. thereof, within thirty days after the expiration of such year, into the treasury of the county in which such probate judge holds office, for the benefit of the school fund of such county; * * *"

Under the above partial section it is compulsory and mandatory that the judge of the probate court, after

deducting necessary expenses for clerk hire, shall turn into the school fund of the county any fees collected by him over and above the salary allowed under the statute to the judge of the circuit court having jurisdiction in his county. This section specifically excludes the twelve hundred dollars allowed the circuit judge as expenses when holding court in other counties. This section also specifically sets out that the salary of the probate judge should be equal to the salary provided by law for the judge of the circuit court (excluding the twelve hundred dollars allowed for expenses as above set out), and, since the Act of 1939 (Laws of Missouri 1939, page 679, supra), is now in effect the judge of the probate court should have the benefit of the new law allowing the judge of the circuit court additional pay as a jury commissioner.

Section 11782 does not exclude the salary of the judge of the circuit court as jury commissioner in setting the limitation of the retention of fees by the probate judge in accordance with the salary of the circuit judge, but does exclude the twelve hundred dollars expenses allowed the circuit judge in setting the salary of the probate judge.

Section 11782 is unambiguous and needs no construction.

In 59 C. J., page 952, it is said:

"The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning."
(Citing *Gendron v. Dwight Chapin & Co.*, (App.) 37 S. W. (2d) 486; *Betz v. Kansas City So. R. Co.*, 284 S. W. 455,

314 Mo. 390; Grier v. Kansas City, C. C. & St. J. Ry. Co., 228 S. W. 454, 286 Mo. 523.)

The compensation of the circuit judge as jury commissioner was held to be "salary" in the case of State ex rel. v. Gass, 296 S. W. 431, 1. c. 433, where the court said:

"The lawmakers of 1921 knew the Supreme Court had, on the 13th of March, 1920, in the case of State ex rel. Buchanan County v. Imel, 280 Mo. 554, 219 S. W. 634, limited the compensation of the probate judge of Buchanan county to the \$2,000 allowed to circuit judges as compensation for judicial services. They also knew, that on the 1st of October, 1920, the Supreme Court in the case of Macon County v. Williams, 284 Mo. 447, 224 S. W. 835, held the \$1,200 allowed to the circuit judges for expenses could not be considered by the probate judge of Macon county in determining the amount of his compensation during the year. They were not satisfied with the salary allowed probate judges, hence the amendment to said section 10991. The circuit judges of Jasper county have only two sources of compensation: Compensation for judicial services, and compensation for services as jury commissioner. The statute as amended provides that in determining the salary of the probate judges the compensation of the circuit judges from all sources must be considered. If we follow the statute, we must hold that the words 'from all sources' include the compensation of

circuit judges as jury commissioners. It follows, and we hold, that from the taking effect of section 10981, R. S. 1919, as amended by the Laws of 1921, p. 604, the compensation of the circuit judges of Jasper county and the amount allowed to them for expenses are as follows: Compensation for judicial services, \$2,000; compensation for services as jury commissioner, \$2,500; for expenses, \$1,200--making a total of \$5,700 per annum. Of these items the probate judge of Jasper county was entitled to consider the \$2,000 for judicial services and the \$2,500 for services as jury commissioner in determining the amount he was entitled to retain out of the fees collected by him during the year for his salary."

As said in the above case, the intention of the legislature was clear, "they were not satisfied with the salary allowed probate judges, hence the amendment to said section 10991."

It is clear the intention of the legislature, in Section 11782, was that the probate judge of any county under the general law is entitled to retain fees in the maximum amount which would equal the compensation allowed circuit judges under the general law with the exclusion of the twelve hundred dollars allowed for expenses when holding circuit court in other counties.

CONCLUSION.

In view of the above authorities it is the opinion of this department that the judge of the probate court of Boone County, after deducting all reasonable and

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necessary expenses for clerk hire, may retain from the amount of fees collected in any one calendar year the amount of \$4800.00.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
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WJB:CP