

SALARIES AND FEES: Salary of the Clerk of the Circuit Court
CIRCUIT CLERKS: of Jackson County is fixed by Section
11820, R. S. Missouri 1929.

January 4, 1940

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Mr. Maurice H. Winger
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Dear Sir:

This is in reply to your letter of December 21, 1939, in which you request an additional opinion from this department on the question of the salary of the Clerk of the Circuit Court of Jackson County, Missouri. In your request you refer to our opinion dated September 16, 1939, on this same subject matter written to Mr. William Goodman, Assistant Attorney General, by the writer of this opinion.

For your reason for the additional request you call our attention to the salary act of county officers in counties of 350,000 to 750,000 as amended, Laws of Missouri, 1935, pages 346 and 347, and particularly call our attention to Section 2 of the Act which provides that all acts or parts of acts in conflict with the Act of 1935 are repealed.

As stated in our opinion of September 16, 1939, we found that statutes applicable to salaries of county officers have been changed and amended and as a result thereof, on account of conflicts in the statutes, it is difficult to determine just what statute applies in some cases. We think the above statement is particularly applicable to the salaries of clerks of circuit courts in this state.

It will be noted that the Act of 1935, page 347, is an amendatory act of the Act of Missouri found in Laws of Missouri, 1933 at pages 373 and 374. From Section 1 of the 1935 Act it will be noted that the purpose of that amendment was to amend the general salary act as it applied to the salary of the county

counselor and change it to Six Thousand Dollars per annum instead of Three Thousand Dollars per annum. This seems to have been the only change which was made in the general salary act as it applies to the county officers therein named. You call our attention to Section 2 of the 1935 Act which provides, "that all acts or parts of acts in conflict therewith are hereby repealed." We gather from your reference to this particular section that you take the view that if there is any act in conflict with said Section 11833, then that act is repealed. Section 11820, R. S. Missouri 1929, provides 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."

We find in the case of State of Missouri ex rel. Baker, Attorney-General, v. Fiala, 47 Mo. 310, at 320, where such a provision as Section 2, supra, was considered by the Supreme Court and also where the question of whether a statute was repealed by implication. In that case the court said:

"Repeals by implication are not favored. The rule in this State may be regarded as settled that a general statute, although inconsistent with the provisions of a prior local law, will not repeal the latter unless there is something in the general law, or in the course of legislation upon its subject-matter, that makes it manifest that the Legislature contemplated and intended a repeal.

* * * * *

"But the act of March, 1870, contained an affirmative repealing section in these words: 'All acts and parts of acts in conflict with this act are hereby repealed.' Do these words spend their force upon inconsistent general laws? or do they, in one breath, sweep away all conflicting local legislation as well? It would be dangerous, to say the least of it, to hold the affirmative of the latter proposition in a State where special legislation has abounded as it has in the State of Missouri. The repealing clause must be construed in connection with the whole act, and with reference to the intention of the Legislature in enacting it. The same rule of construction is to be applied to it that is applied to the main body of the act. The word 'repealed' is not necessarily to be taken in its most sweeping and absolute sense. In *Rex v. Rogers*, Lord Ellenborough says: 'This word is not to be taken in an absolute, if it appear upon the whole act to be used in a limited sense.' (10 East, 573; and see *Canndon v. Anderson*, 1. T. R. 723; *Sedgw. Stat. and Const. Law*, 129.) The whole act, then, is to be consulted to determine the proper construction to be placed upon the repealing clause, however comprehensive the terms may be in which that clause is phrased. This is a doctrine of common sense as well as of the law."

As stated in the *Fiala* case, *supra*, it would be dangerous to say the least of it, to hold that such a repealing clause in one breath would sweep away all

conflicting local legislation, especially where there is so much special legislation in this state on different subjects. In paragraph three of the syllabus to the Fiala case it is said that such a repealing clause in terms repeals acts and parts of acts in conflict with it, refers only to general inconsistent laws. So if the 1935 Act is a general section on salaries of county officers, then it would only repeal general acts which are in conflict with it following the rule announced in the Fiala case. Therefore, we do not think that Section 2 of the 1935 Act would be pertinent to the question here or have any effect upon Section 11820 if said Section 11820 is a special act pertaining to salaries of clerks of the circuit courts in counties of 300,000 or over. In the case of State ex rel. McDowell, Inc., v. Smith, 334 Mo. 653, the court had under consideration the county budget law and the State Highway Act. The question there involved was whether the State Highway Act and the officials acting under that act were subject to the provisions of the county budget act when purchases for supplies were made by the State Highway Department. In that case the court held that the highway act was a special act and that the purchasing agent act was a general act. At l. c. 669 the court, in referring to the highway act, said:

"* * * * The act is a special law; a complete, well-rounded harmonious whole, relating to a single homogeneous enterprise that was designed by the people and furthered by the Legislature to 'get Missouri out of the mud.' Notwithstanding this well-designed, practical and complete scheme, with its checks and balances, in the form of audit supplemented with reports required to be made to the Governor and to the Legislature, did the General Assembly intend or undertake by the Purchasing Agent Act to interfere with and supplant that scheme in the matter of purchases of road material for highway

construction, by requiring such purchases, and their incidents, to conform to and be governed by this later act, which is a general statute? To this question, the last to be determined, we now address ourselves.

"The Purchasing Agent Act discloses on its face that it was intended to apply to some extent to the State Highway Commission, as the commission is specifically mentioned in the provision which requires that one of its members in conjunction with representatives of other designated departments and institutions act with the state purchasing agent in the adoption and promulgation of certain standards relative to supplies. Also, the commission is referred to by necessary implication elsewhere in the act. Granting that, we are in this proceeding concerned with only the effect of the act with respect to its operation vel non upon the purchases by the commission of materials for use in road construction, as only such are involved in the claim in suit."

The court, in stating applicable and controlling subsidiary rules of interpretation of general and special statutes, said:

"It is the established rule of construction that the law does not favor repeal by implication but that where there are two or more provisions relating to the same subject matter they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the

other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions.'

(1 Lewis-Sutherland Stat. Const.

(2 Ed.), sec. 274, pp. 537-539.

See, also, State ex rel. Rutledge v. School Board, 131 Mo. 505, 516, 33 S. W. 3; Manker v. Faulhaber, 94 Mo. 430, 440, 6 S. W. 372.)

"In many of the cases just cited (under the passage quoted, supra) there was a general repeal of all inconsistent acts and parts of acts. As a general rule the insertion of this general repealing clause does not add anything to the effect of the general act to repeal local or special laws.' (Lewis-Sutherland, supra, p. 529.)

"The same text states in Section 275: 'The general law can have full effect beyond the scope of the special law, and by allowing the latter to operate according to its special aim, the two acts can stand together. Unless there is a plain indication of an intent that the general shall repeal the other, it will continue to have effect, and the general words with which it conflicts will be restrained and modified accordingly.'"

Following the rules announced in the Smith case, supra, then unless the Act of 1935, page 347, shows a clear intention to repeal said Section 11820 if it is a special statute, then said Section 11820 will continue

to have effect and the general words in the 1935 Act with which it conflicts will be restrained and modified accordingly.

Section 11833 of the 1935 Act, pages 346 and 347, provides as follows:

"Salaries of officers in certain counties.--On and after January 1, 1933, the following salaries shall be paid the hereinafter named officers of all counties in this state which now contain or may hereafter contain a population of three hundred fifty thousand and less than seven hundred fifty thousand, viz: Sheriff, five thousand dollars; collector of revenue, four thousand dollars; treasurer, four thousand dollars; county counselor, not exceeding six thousand dollars; prosecuting attorney, five thousand dollars; recorder of deeds, three thousand dollars; clerk of county court, three thousand dollars; clerk of circuit court, three thousand dollars; coroner, three thousand dollars; assessor, three thousand dollars; county surveyor and bridge commissioner, three thousand dollars. Such salaries to be paid in monthly installments on the first day of each month: Provided, however, that the salary of the county surveyor or bridge commissioner, and the salary of the prosecuting attorney in counties having a population of two hundred thousand inhabitants and less than three hundred thousand inhabitants, shall be three thousand dollars and five thousand dollars, respectively, per annum, payable in equal monthly installments on the first day of each month."

By a comparison of Sections 11820 and 11833, supra, it will be seen that both sections include the salary of the clerk of the circuit court in counties of 350,000 to 750,000.

From the rules announced above, the question of whether or not said Section 11820 is repealed by implication by the provisions of Section 11833, would depend upon whether said Section 11833 is a general salary act applicable to all county officers therein named and whether said section 11820 is a special salary act applicable to the salary of the clerk of the circuit court in counties of 300,000 or over. In order to determine this question, we think it is necessary to review the salary legislation of county officers and circuit clerks from the time that the lawmakers had such officers and their salaries under consideration. As stated above, the purpose of the amendment of the salary Section 11833 in 1935 was to change the salary of the county counselor and carry the other general provisions of the old act with it.

In 1933 at page 373, the general salary act of 1931, page 323, was repealed and reenacted. In the 1933 Act the treasurer and county counselor were added and the marshal was omitted so that seems to have been the purpose of the repeal and reenactment of the general salary act in 1933.

Then going back to 1931, Laws of Missouri 1931, page 323, which was to repeal Section 11833, R. S. Missouri 1929, it will be seen that the purpose of this amendment was to change the brackets as to the population of counties to which this general act applied so that it would include counties of a population from 350,000 to 750,000. It will be noted that none of these changes in said Section 11833, R. S. Missouri 1929, referred in any manner to said Section 11820.

Section 11833 was originally enacted in 1893, Laws of Missouri, 1893, page 168. In the original act

various county officers and their salaries were included including the office of the clerk of the circuit court. The counties to which this act was originally intended to apply were those which contained a population of 100,000 and less than 300,000.

In 1901, Laws of Missouri, 1901 at page 175, this act was amended so that it applied to officers therein named in counties containing a population of 150,000 and less than 300,000.

In 1907 this act was amended so that it applied to officers therein named in counties of 150,000 and less than 500,000. Said Section 11833, R. S. Missouri 1929, as originally passed in 1895 and as amended down to this time has not at any time referred to said Section 11820, supra.

We will now review the history of said Section 11820, R. S. Missouri 1929. It seems that this law was originally passed in 1877, Laws of Missouri 1877 at page 255. Section 1 of the Act is as follows:

"Section 1. That in all counties (and cities not within the limits of a county) having a population of 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."

In the revision of 1879, R. S. Missouri 1879, Section 5632, the foregoing section, which is applicable to the circuit clerks in counties of 100,000 or more, was combined with a section which is applicable to clerks of courts having criminal jurisdiction. That part of said Section 5632 of 1879, which is applicable to clerks of criminal courts, is now Section 11821,

R. S. Missouri 1929 with some changes.

In 1887 the General Assembly, in Laws of Missouri, 1887, page 192, reenacted the provisions of the circuit clerk act in counties of 300,000 or more and the act, as amended, included the same provisions as said Section 11820, R. S. Missouri 1929 now contain. This act also required the circuit clerk and criminal clerk to make a return and report of their fees to the county treasurer. The Act, as so amended, was carried into the revision of 1889 as Section 5015, R. S. Missouri 1889.

In 1895, Laws of Missouri, 1895 at page 178, this circuit clerk and criminal clerk act was again before the General Assembly and it was amended and reenacted carrying forward the same provisions as to the circuit clerk which were contained and are now contained in said Section 11820, R. S. Missouri 1929.

The said circuit clerk act, as amended, was placed in the revision of 1899 at Section 3271. In 1905, Laws of Missouri, 1905, page 154, the General Assembly again had the law pertaining to clerks of circuit courts in counties of 300,000 or more before it and reenacted the law which was then in existence as it applied to the circuit clerk, and that same provision of the law is now in Section 11820, R. S. Missouri 1929. This Act of 1895, referred to above, was carried into the revision of 1909 as Laws of Missouri, 1909, Section 10727.

In 1911 this act was again before the lawmakers, Laws of Missouri, 1911, page 386, and by that act the law, as it pertained to circuit clerks and criminal clerks in counties of 300,000 or over, was separated. The provisions of Section 11820, R. S. Missouri 1929, were placed in Section 10727 of Laws of Missouri, 1911 at page 386, and the provisions of what is now Section 11821, R. S. Missouri 1929, were placed in Section 10727a of the Act of 1911, page 386. This is the first time that we find where the act pertaining to salaries of circuit clerks and criminal clerks in counties of 300,000 or over was separated.

The Act of 1911, supra, was carried into the revision of 1919, Section 11028, in the same language that Section 11820, R. S. Missouri 1929, now appears.

We are further fortified in our views that the provisions of Section 11833 of Laws of Missouri, 1935, at page 347, are intended to be general and not apply to salaries of clerks of circuit courts in counties of 300,000 or over for the reason that in 1907, Laws of Missouri, 1907, page 420, this general salary act was amended to include counties containing a population from 150,000 to 500,000. Then the Legislature came along in 1911 and at that time had under consideration the provisions of Section 11820 which only applied to the salaries of circuit clerks in counties of 300,000 or over and reenacted that legislation in its act of that year, Laws of Missouri, 1911, page 386. We must assume that the lawmakers took notice of the general act of 1907, page 420, supra, as it applied generally to county officers, but when they enacted the law of 1911, page 386, wherein they separated the law as it applied to clerks of circuit courts and clerks of criminal courts in counties of 300,000 or over, intended that this act be a special act applicable to such officers.

It is our understanding that the administrative officers of Jackson County have, for many years, considered the provisions of said Section 11820 in full force and effect and applicable to the salary of the Clerk of the Circuit Court of Jackson County, Missouri. While the courts are not bound by the construction placed on a statute by the administrative officials, yet such a construction should be given some consideration. This rule is announced in 59 C. J. 1037, and in the cases of *In re Graves*, 30 S. W. (2d) 149, 154; *State v. Fendorf*, 296 S. W. 1. c. 789 (5).

Since 1911 when said Section 11820 was repealed and reenacted, Laws of Missouri 1911, page 386, there have been three revisions of the statutes of Missouri, that is, 1919, 1929 and 1939, and it is significant that the lawmakers have seen fit to carry said Section 11820 into the Revised Statutes at each of these

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revisions and even since the amendments to Section 11833, R. S. Missouri 1929, which took place in 1931, 1933 and in 1935. The lawmakers in 1939 apparently considered that said Section 11820 had not been repealed by implication by said Section 11833 or any of its amendments thereto. The fact that Section 11820, R. S. Missouri 1929 has been carried through these revision sessions strongly indicates that the lawmakers have treated this section as a special act applicable to the salaries of clerks of the circuit courts in counties of 300,000 or more, and for that reason it has been brought forward as the law.

From a study of the history of the legislation pertaining to the office of clerk of the circuit court and the general salary statutes hereinbefore referred to, we are satisfied that Section 11820 is a special act pertaining to the salaries of clerks of circuit courts in counties of 300,000 or more and that the provisions of Section 11833, R. S. Missouri 1929, as amended by Laws of Missouri, 1935 at page 347, is a general section pertaining to all county officers, and that the provisions of said Section 11820 have not been repealed by implication by said Section 11833, or any of the amendments to that section.

CONCLUSION.

From the foregoing it is the opinion of this department that the salary of the Clerk of the Circuit Court of Jackson County should be determined and paid in accordance with the provisions of Section 11820, R. S. Missouri 1929.

Respectfully submitted,

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APPROVED:

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