

OFFICERS: Presiding judge of the county court may be appointed deputy circuit clerk.

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January 26, 1943

Honorable A. E. Orchard  
Presiding Judge of County Court  
Shannon County  
Eminence, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of January 26, 1943, which reads as follows:

"Will you please give me an official opinion as to whether I, as presiding judge, can be appointed as deputy circuit clerk of Shannon County?"

In answer to your request, we are submitting a copy of an opinion rendered by this office to the Honorable William Barton, Member of House of Representatives, Jonesburg, Missouri, dated December 28, 1942, in which we held that a person may hold the office of justice of the peace, and coroner, for the reason that the duties of either office are not incompatible, conflicting, repugnant or inconsistent with the duties of the other. We are enclosing this opinion in order to set out the rule of incompatibility. Since this opinion holds that there are no constitutional or statutory prohibitions preventing a person from holding two county offices, the question then reverts to the common law as to whether or not the two positions are incompatible or inconsistent. In this opinion, at page five, we set out Section 46, of 45 Corpus Juris, which states the general rule as to incompatibility. In a careful research of the duties of a presiding judge of a county court, and the

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duties of a deputy circuit clerk, we find no duties that are incompatible, conflicting, repugnant, or inconsistent, nor do we find any duties imposed upon a judge of the county court, or upon a deputy circuit clerk, wherein one is subordinate in some degree to the supervisory power of an incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other, or to audit the accounts of the other.

We are also enclosing a copy of an opinion rendered by this office to the Honorable Robert H. Frost, Prosecuting Attorney, Clinton County, Plattsburg, Missouri, dated December 29, 1942, in which we held that in counties having a population of less than nineteen thousand, where the circuit clerk is also ex officio recorder of deeds, his deputies must be approved or disapproved by the judge of the circuit court, and not by the county court, for the reason that the deputies are not deputy recorders of deeds, but are deputy circuit clerks acting as deputy recorders of deeds.

Section 13495 R. S. Missouri, 1939, reads as follows:

"The number of all deputies required by any county office shall be submitted to the county court, and the county court shall by order of record, permit such number as in their opinion the necessary duties of the office require, and it shall be the duty of each officer to submit the names of the deputies appointed not to exceed in number the number allowed by the county court, and such names shall be made a matter of record by the county court."

Under the above section the number of all deputies required by any county office shall be submitted to the county court which passes upon the number of deputies. We cite this section, for the reason that deputy circuit clerks are an exception to that section, because, under Section 13434 R. S. Missouri, 1939, which is set out in our opinion to Honorable Robert H. Frost, herein enclosed, the clerk of the circuit court shall be entitled to such number of deputies and assistants, to be appointed by the circuit clerk, with the approval of the judge or judges of the circuit court, and not by the judges of the county court, as set out under the general section, 13495, supra.

Also, under Section 13434, supra, which applies to the appointment of deputy circuit clerks, the judge or judges of the circuit court in their order permitting the clerk to appoint deputies, or assistants, the compensation of such deputies or assistants, and the time for which such deputies may be employed, shall be fixed. By reason of this section the county court does not pass upon the number or compensation of the deputy circuit clerks, and it lies solely in the discretion of the judge or judges of the circuit courts.

The population of Shannon County is 11831.

#### CONCLUSION

It is, therefore, the opinion of this department, that the presiding judge of Shannon County, may be appointed by the clerk of the circuit court as a deputy circuit clerk, with the approval of the judge of the circuit court, for the reason that the duties of the

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presiding judge of the county court and the duties of a deputy circuit clerk are not incompatible, conflicting, repugnant or inconsistent with the duties of the other.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

WJB:RW