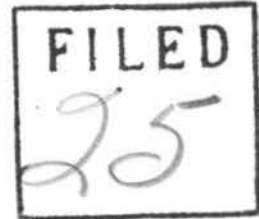


ASSESSORS: May appoint deputy to be paid out of the fees allowed to such assessor.

June 27, 1944



Honorable John W. Dugan
Judge 2nd District
Herculaneum, Missouri

Dear Judge Dugan:

This is an acknowledgment of your opinion request addressed to the General on June 24, 1944, which is as follows:

"The assessor of this county is having difficulty in securing deputies to assess property.

"We pay the assessor thirty-five cents for each list, and out of this he must pay his deputies.

"Is there any way in which we may pay the assessor or his deputies an additional amount?"

Section 10946, R. S. Mo. 1939, is as follows:

"Every assessor shall take an oath that he will faithfully and impartially discharge the duties of his office, and that he will assess all the property in the county in which he assesses at what he believes to be its actual cash value. And every assessor may appoint as many deputies as he may find necessary, to be paid for out of the fees allowed to such assessor, for whose official acts he shall be responsible, and who shall take the same oath and have the same power and authority as the assessor himself, while employed as such deputy or deputies."

Such statute provides for the payment of the deputy assessor, for his services in such capacity, out of the fees allowed the assessor. We find no other statute providing for such payment in any other manner

In regard to such question the Supreme Court in the Case of Maxwell v. Andrew County, 146 S. W. 2d 621, 625, held:

"It is well established law that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. Gammon v. Lafayette County, 76 Mo. 675; State ex rel. Evans v. Gordon, 245 Mo. 12, 149 S. W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; Jackson County v. Stone, 168 Mo. 577, 68 S. W. 926; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504; Bates v. City of St. Louis, 153 Mo. 18, 54 S. W. 439, 77 Am. St. Rep. 701; Williams v. Chariton County, 85 Mo. 645.***"

He who accepts public office takes the office cum onere. The fact that in performing duties incident to the office would incur a hardship is a matter for the consideration of the legislature. Such rule was stated in the Case of State ex rel. Buder v. Hackmann, 305 Mo. 342, 351, in the following language:

"The argument of hardship and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. (State ex rel. v. Brown, 146 Mo. 1.c.406.) It may be that an assessor actually sustains a financial loss in the performance of his duties under our State Income Tax Law. But such fact is for consideration by the Legislature, and not by the courts.

"In view of what we regard as the plain provision of the statute that clerk or deputy hire shall be paid by the assessor out of

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the fees received by him, the cases of Ewing v. Vernon Co., 216 Mo. 681, and Harkreader v. Vernon Co., 216 Mo. 696, cited and relied upon by relator, need not be discussed."

CONCLUSION

It is the opinion of this department that in as much as the only compensation allowed an assessor of your county is certain fees fixed by the legislature, such compensation may not be increased by the county court.

Respectfully submitted,

SVM:EH

S. V. MEDLING
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General