

PROBATE JUDGE:

FEEES:

RECORDER OF DEEDS:

Count Court of Boone County cannot make allowance to Probate Court of more than \$1800.00 per year for clerks, assistants and stenographers. Recorder of Deeds of Boone County, whose term expired January, 1947, is liable to county for fees received by him in 1945 and 1946 in excess of \$4000.00 plus payments to necessary deputies and assistants for each year.

January 25, 1947

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Copy to
J. Smith

Honorable Howard B. Lang, Jr.
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"Boone County has an assessed valuation of more than \$18,000,000.00 but less than \$30,000,000.00. The Probate Judge of this county has requested that I write you for an opinion as to the payment of clerks, assistants and stenographers in his office. Prior to the enactment of Senate Bill No. 198 by the Sixty-third General Assembly, this office was strictly a fee office. Our County Court allowed to the Probate Judge for stenographic and typing service the sum of \$100.00 per month. This was paid in addition to the compensation of the judge and clerk which was derived from the fees of the office.

"Under the provisions of Senate Bill No. 198, an allowance of not to exceed \$1,800.00 is made for such services. The Probate Judge of this county has made a request in his budget for 1947 for an additional allowance for clerical, stenographic and typing service, in addition to the \$1,800.00. This request is based on the provisions of Section 2004, R. S. Mo. 1939, which makes it incumbent upon the judge of the Probate Court to see that the records of the court are properly kept, and on the provisions of Section 2447, R. S. Mo.

1939 which makes it the duty of the county to pay certain expenses designated as 'necessaries.'

"An opinion was rendered in the year 1945 by your office stating that the word 'necessaries' included stenographic and typist hire, and ruled that the Probate Clerk could receive a salary from the county for stenographic and typing service, in addition to the amount received by her as clerk from the Probate Judge.

"The questions submitted are:

"1. Can the County Court make an allowance to the Probate Court of more than \$1,800.00 for deputy, clerical, assistants and stenographic help?

"2. If so, can this be paid to the clerk for stenographic and typing service, in addition to the amount paid her as clerk?

"3. What effect, if any, does Senate Bill No. 198 have on your prior opinion which was issued in 1945?

"4. If your answer to question No. 1 is yes, must the County Court make an allowance above \$1,800.00 upon the proper showing that such expense is necessary in the proper operation of the office and in the keeping of the records thereof?

"Your attention to this matter will be greatly appreciated, because the County Court is now passing on the budget requirements of the various offices of the county."

Section 5 of Senate Committee Substitute for Senate Bill No. 198 of the 63rd General Assembly provides, in part, as follows:

"In all counties now or hereafter having more than 30,000 inhabitants, the probate judge shall appoint their own clerks, assistants and stenographers, and shall determine their number and their salaries by order of record, and may remove them when in the discretion of

such judges it is deemed advisable. All salaries of such judges and their appointees shall be paid monthly by the county, upon requisition issued by the judge of such court. In all counties now or hereafter having more than 30,000 and less than 70,000 inhabitants, the total salaries of all clerks, assistants and stenographers in the probate court for any one calendar year shall not (a) in counties with an assessed valuation of \$18,000,000 or less exceed the sum of \$1200.00; (b) in counties with an assessed valuation of more than \$18,000,000 and not more than \$30,000,000 exceed the sum of \$1800; * * * (Emphasis ours.)

It will be noted that the opinion which you refer to in your letter was not based upon either Section 2004 or Section 2447, R. S. No. 1939, but was based upon the ruling of the court in the case of Rinehart v. Howell County, 348 Mo. 421, 153 S. W. (2d) 381. The opinion held, in part, as follows:

"The Rinehart case is authority, we think, for the conclusion that if a county court determines that stenographic services for a county officer are necessary for the proper conduct of the duties of such officer, such services can be paid for by the county court out of the county revenues, and further that if stenographic services are in fact indispensable to the proper functioning of a county office, and the county court refuses to provide same, and the officer is compelled to provide them himself, then such officer can recover from the county his reasonable and actual expenditures for such services. Whether stenographic services are indispensable to any county officer is a question of fact to be determined in the first instance by the county court, and if that body acts arbitrarily in such determination, then by a court of law in a suit by the officer for recovery of his expenditures for such services."

The holding in the opinion above quoted was arrived at on the basis of the fact that if it could be established as a fact that such help was indispensable to the proper functioning of the public office of probate judge, it became the duty of the county court to furnish such help.

Senate Committee Substitute for Senate Bill No. 198 is a direct expression of the legislative determination of the maximum amount of money necessary to be expended for the payment of clerks, assistants and stenographers necessary for the proper conduct of the office of probate judge.

However, even if it were held that Sections 2004 and 2447, R. S. No. 1939, authorize or provide any basis for a claim for additional deputies, clerks, assistants and stenographers, such provisions would be in conflict with that part of Senate Committee Substitute for Senate Bill No. 198 which provides that "the total salaries of all clerks, assistants and stenographers in the probate court for any one calendar year shall not * * * in counties with an assessed valuation of more than \$18,000,000 and not more than \$30,000,000 exceed the sum of \$1800."

A rule of statutory construction is found in *State v. Gehner*, 280 S. W. 416, 1. c. 418, where the Supreme Court of Missouri said:

"Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one, and, where the general act is later, the special act will be construed as remaining an exception to its terms unless it is repealed in express words or by necessary implication." 36 Cyc. p. 1151."

Senate Committee Substitute for Senate Bill No. 198 is a specific, clear and definite determination by the Legislature of this state of the amount to be paid in counties of a specified population for clerks, assistants and stenographers in the probate court. This bill must be regarded as a special provision which prevails over the provisions of Sections 2004 and 2447, R. S. No. 1939. Such bill governs the maximum amount to be paid to such clerks, assistants and stenographers in the counties covered by the provisions of this bill, and the county court cannot increase the amount provided by this statute.

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The second request in your communication is in regard to the right of the recorder of deeds whose term expired in January, 1947, to withhold from the fees received by him an amount greater than \$4000.00 plus the necessary payment for deputies and assistants for each year.

Section 13187, U. S. No. 1939, provides as follows:

"The recorder of each county in which the offices of recorder of deeds and clerk of the circuit court are separate shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and all the fees received by him, over and above the sum of four thousand dollars, for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury, to form a part of the jury fund of the county." (Emphasis ours.)

Section 1 of House Bill No. 772 of the 63rd General Assembly provides as follows:

"The recorder in counties of the third class, wherein there shall be a separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and all fees received by him, over and above the sum of \$4000 except those set out in Section 2 hereof, for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury."

The maximum amount that may be retained in any one year by the recorder of deeds, exclusive of the amount paid to necessary deputies and assistants, is clearly, then, set out in the statute, and such payments are to be made out of the fees received by such recorder of deeds. It is specifically provided that \$4000.00 is the maximum to be retained in any one year, and the surplus over \$4000.00 in any one year cannot be applied by the

recorder of deeds to make up the difference between the \$4000.00 maximum allowed and the amount of fees actually received by him during another year of his term of office.

It is provided in Section 13187, R. S. No. 1939, and in Section 1 of House Bill No. 772 that a report each year shall be made by the recorder to the county court, stating the amount of the fees collected. Obviously, this report is made so that the amount, if any, due the county may be determined and paid to the county each year. If the Legislature had intended that a surplus of fees over \$4000.00, exclusive of the amount paid to necessary deputies and assistants, received in any one year, could be applied to make the fees amount to \$4000.00 each year of the term of office of the recorder, the Legislature would have provided that the recorder of deeds could retain out of the fees of his office \$16,000.00 for each term, exclusive of the pay of necessary deputies and assistants, and that any balance should be paid to the county.

In the case of *Harrington v. City of St. Louis*, 107 Mo. 327, a similar statute was construed regarding this point. The Supreme Court said in that case, l. c. 329-330:

"The act of 1879 relates alone to the compensation of the sheriff of the city of St. Louis. By the first section it is made the duty of the sheriff to keep a full itemized account of all fees, commissions and emoluments accruing to him by virtue of his office, and of all expenses, including the pay of his deputies, incurred by him in the discharge of the duties of his office." Section 2 provides in substance that he shall, at the end of each six months, file in the circuit court a statement of his receipts and expenses for such period of six months; and it is made the duty of the court to audit the account.

"The third section provides: 'Such sheriff, out of the fees, compensation and emoluments of his office, may, for each year of his term of office, receive and retain the sum of \$10,000, over and above all such expenses as shall be allowed to him in his settlements above provided for; and all fees, compensation and emoluments which shall be collected by any sheriff, or by his successor for him, in excess of the amount which such sheriff may receive and retain, shall be paid to the

treasurer of the city of St. Louis, for the use of said city.'

"There can be no doubt but the statements for each of the two official terms must be made the same as if the terms were held by different persons. This the circuit court held. But the court held that the sheriff could combine his accounts for the two years of the same term. The result of this ruling was to allow the sheriff to aggregate the receipts for the two years of the same term, then deduct the expenses for deputy hire, and retain for his own compensation \$20,000, the excess, if any, to be paid over to the city. In this ruling the court erred. The section of the constitution before quoted declares in plain terms that the fees of no such officer, exclusive of salaries actually paid to his deputies, shall exceed the sum of \$10,000, for any one year. This does not mean that the fees, over and above deputy hire, shall not exceed \$20,000 for two years. The law itself divides the official term into years for all the purposes of applying the limitation as to the amount of fees which the sheriff may retain. Each year of the official term stands by itself. It follows that the sheriff must render a separate account of receipts and expenses for each year. When the fees for the particular year reach the amount of \$10,000, with expenses added, the balance must be paid over to the city. The excess of one year cannot be carried into another year for the purpose of bringing the fees of that year up to \$10,000, with deputy hire added. It is not the object of this law to make the clear compensation of the sheriff \$10,000, per annum. His compensation for each year must come from the fees and emoluments of the office for that year, but when they reach the clear sum of \$10,000, the balance must be paid over to the city."

Section 13185, R. S. No. 1939, provides as follows:

"The recorder shall not be bound to make any record for which a fee may be allowed by law, unless such fee shall have been paid or ten-

dered by the party requiring the record to be made."

From the provisions of Section 13185, it is evident that no contention can be made by the recorder that part of the fees received in 1945 or 1946 were earned in prior years but not collected until 1945 and 1946. Therefore, the case of Allen v. Cowan, 96 Mo. 193, is not applicable to the facts in the present case.

The claim of the recorder that he is entitled to retain fees received in 1945 and 1946 in excess of the \$4000.00 maximum limit, exclusive of necessary pay for deputies and assistants, because of the fact that he allegedly rendered service to soldiers without charge in various years of his term, is without merit. The general rule regarding the compensation any public officer is entitled to is set out in Nodaway County v. Kidder, 129 S. W. (2d) 857, 1. c. 860:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

In State v. Nolte, 180 S. W. (2d) 740, 1. c. 741, the Supreme Court said:

" * * * Extra compensation for extra services must be expressly authorized. See Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857. * * * "

The opinion of this office rendered to George Spencer, Prosecuting Attorney of Boone County, under date of July 5, 1946, covers specifically the services of the recorder of deeds in connection with "work done for soldiers," for which the county is liable and for which the county pays the recorder.

Under the rule above set out, and in view of the opinion of this office of July 5, 1946, it is clear that the county is not to pay any fees or to allow any fees to the recorder for alleged "free work done for soldiers" during the years 1942, 1943 and 1944.

We are enclosing a copy of an opinion of this office rendered under date of November 20, 1945, to Robert Niedner, Prosecuting Attorney of St. Charles County, regarding the payment of additional help in the recorder's office for recording service discharges. It will be noted that this opinion holds that the payment of such help is to be made out of the fees which the recorder receives for his services.

In the case of State ex rel. v. King, 136 Mo. 309, l. c. 319, the Supreme Court said:

" * * * Four thousand dollars was fixed as the amount the recorder was capable of earning at the established charges; and, when the fees for work required to be done exceed that sum, it is a fair presumption that assistance would be necessary. If necessary, the constitution and statute clearly intend that assistants should be employed and paid."

This statement by the court clearly shows the construction of the statute by the court to be that the payment of assistants in the office of recorder of deeds should be paid out of fees received by the recorder. We are unable to find any authority for the payment of any assistants to the recorder of deeds except out of fees received by him.

CONCLUSION

It is the opinion of this department that the County Court of Boone County cannot make an allowance to the Probate Court of that county of more than \$1800.00 per year for deputy, clerical,

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assistants and stenographic help.

It is further the opinion of this department that the Recorder of Deeds of Boone County, whose term ended January, 1947, is liable to Boone County for fees received by him in 1945 and 1946 in excess of \$4000.00, exclusive of payments to necessary deputies and assistants for each year.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR