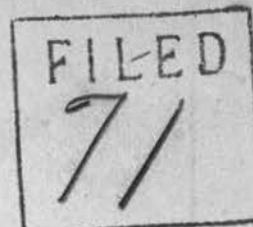


MAGISTRATES: Maximum amount payable by state for clerk hire in St. Louis.



May 13, 1949

5-13

Hon. E. L. Pigg
Comptroller
Department of Revenue
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Under Laws 1945, Sec. 22, page 776, and Laws 1947, Vol. 1, Sec. 5, page 259, nine clerks of the nine magistrate courts in the City of St. Louis are each paid a salary at rate of \$3,000.00 per annum.

"Sec. 3, Laws 1945, page 808, provides for a Chief Clerk and two deputies. No compensation is fixed.

"The chief magistrate of the magistrate courts in the City of St. Louis makes requisition for salaries for the chief clerk and the two deputies at the rate of \$5,000.00 per annum for the chief clerk and \$2,400.00 each for the two deputy clerks. A letter from George W. Johnson, Chief Magistrate in City of St. Louis dated March 9th, 1949, states that beginning April 1st salaries of the chief clerk will be increased to \$6,000.00 per year and the deputies to \$3,600.00 per year.

"May I have an opinion as to what salary, if any, the State is to pay to the chief clerk and the two deputies, provided for in Sec. 3, Laws 1945."

The organization of the Magistrate Court of the City of St. Louis is provided by an act of the General Assembly, found in Laws of 1945, page 807, as amended by Laws of 1947, Volume I, page 258. Section 3 of the act provides, in part:

"Each such magistrate court in banc shall be composed of all the magistrates, and each division thereof shall be composed of at least one magistrate. The court may appoint from its number a chief magistrate, and may appoint and remove at its pleasure a chief clerk and not more than two deputy clerks, and a chief constable from among the constables. * * *"

Section 5 (found in Laws of 1947, Vol. I, p. 258) provides, in part:

"The salaries of the magistrates and clerks of the court shall be fixed and paid as provided by general law for other magistrates and clerks in such counties, except that the annual salary of each magistrate shall be \$6,000.00. * * *"

The section then fixes the salary of the constable and his deputies, but contains no reference to the salaries of the clerks of the court.

Section 21 of the general Magistrate Court Law (Laws 1947, Vol. I, p. 240) provides, in part, as follows:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. * * *"

Section 22, Laws of 1945, page 765, provides, in part, as follows:

"Salaries of clerks, deputy clerks and employees provided for in the last preceding

section shall be paid by the state within the limits herein provided upon requisition filed by the judge of the magistrate court; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in Section 1 of this act shall be paid by the county as the salaries of such magistrates are required to be paid. The total amount that may be paid by the state in any one year for such clerks, deputy clerks and employees of the magistrate courts in the different counties shall not exceed the following sums:

" * * * and in all counties now or hereafter having a population in excess of 100,000 inhabitants, the sum of \$3000 for each magistrate in the county. * * *"

It will be noted that Section 22 of the general Magistrate Court Law, in prescribing the limitation upon the amount which the state shall pay for clerical hire in the various counties, refers to the "Salaries of clerks, deputy clerks and employees provided for in the last preceding section," which is Section 21.

The chief clerk of the Magistrate Court for the City of St. Louis and his two deputies are not appointed under Section 21. They are appointed pursuant to Section 3 of the law applicable to the City of St. Louis, supra.

Thus, there is no statutory limitation upon the amount which the State of Missouri shall pay for the salary of the chief clerk and his deputies. That the state is liable to pay such salaries was determined by the Supreme Court in the case of State ex rel. Hart, et al., v. City of St. Louis, 356 Mo. 820, 204 S.W. (2d) 234.

In view of the statute authorizing the magistrate court to fix the salaries of clerks and deputy clerks at such sum as in the discretion of the court may seem proper (Sec. 21, supra), the holding of the Supreme Court that the state is liable for such salaries, and the lack of any limitation upon the amount which the state shall pay on such salaries, we feel that the state is required to pay such salaries as may be fixed and determined by the magistrate court.

Hon. E. L. Figg

-4-

Conclusion.

Therefore, it is the opinion of this department that the state is liable for the pay of the chief clerk and two deputy clerks for the Magistrate Court of the City of St. Louis in such amounts as may be fixed by said court for the salaries of such chief clerk and two deputy clerks.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW:ml