

PROBATE COURT) Probate clerks may not receive increased compensation
) based upon increased valuation during term of Probate
) Judge.

November 9, 1949

11/10/49

Honorable O. L. Spencer
Judge of Probate
Scott County
Benton, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this Department, reading as follows:

"When I took office as Probate Judge on January 1st, 1947, the population of this County was in excess of 30,000 and the assessed valuation was less than 18 million dollars, which fixed the salary of the Probate Judge under section 2 of the Laws of 1945 at \$3600.00, and Section 5 of said Laws provided that not more than \$1200.00 be spent for Clerk hire.

"Section 5 was amended in 1947 and shown at pages 361 and 362, Volume 2 of the Laws of 1947.

"The assessed valuation of the County has now increased to more than 18 million, which increases the amount that can be paid for Clerk hire to \$1800.00, and I would like an opinion as to whether I am permitted to pay more for Clerk hire at this time, as the \$1200.00 is inadequate."

The act referred to in your letter is found Laws of Missouri, 1945, at page 1514. The amendment found Laws of Missouri, 1947, Volume II, page 361, is immaterial insofar as the question you have proposed is concerned.

Section 2 of the act mentioned reads in part as follows:

"The annual salary of probate judges in counties now or hereafter having more than 30,000 and less than 70,000 inhabitants, shall be as follows:

"(a) In counties with an assessed valuation of \$18,000,000 or less, the sum of\$3600.00

"For the purpose of this Act, the assessed valuations of all property in the respective counties, as last determined by the commission or other body provided by law for the equalization of taxes as between the counties next prior to the election of such judges, shall be deemed to be the assessed valuations for the ensuing terms of such judges."

(Underscoring ours.)

Section 5 of the same act reads in part as follows:

" * * * 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; * * *"

We have emphasized a portion of Section 2 as we feel that the limitation contained therein is applicable to both the section in which it is found and also to Section 5. We so believe because of the specific incorporation of the phrase, "for the purpose of this act," since both sections hereunder discussion were adopted simultaneously, being Senate Committee Substitute for Senate Bill No. 198 of the Sixty-third General Assembly.

From the foregoing we reach the conclusion that an increase in valuation of the county during the term of a probate judge will not serve to authorize increased payments for clerical assistance.

Your attention is also directed to an official opinion of this office delivered under date of August 6, 1949, to the Honorable Howard B. Lang, Jr., Prosecuting Attorney of Boone County, a copy of which is attached hereto.

CONCLUSION.

In the premises we are of the opinion that increased payments

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for clerical assistance may not be made during the term of a probate judge, even though the assessed valuation of the county may increase to such an extent that a greater amount may be paid during the succeeding term.

Respectfully submitted,

APPROVED:

WILL F. BERRY, JR.
Assistant Attorney General

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W.F.B.
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Enclosure