

CIRCUIT CLERKS- - - -) Under the provisions of Section
Deputies and Assistants.) 483.345, RSMO 1949, Clerks of Circuit
Courts in class three counties in this
State may discharge any deputy or as-
sistant at any time.

January 2, 1952

1-3-52

Honorable William L. Hungate
Prosecuting Attorney
Lincoln County
Troy, Missouri

FILED
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Dear Mr. Hungate:

This will be the opinion you requested from this Department on the question whether the Circuit Clerk and Ex-Officio Recorder of Deeds of Lincoln County has the power to discharge a Deputy Circuit Clerk prior to the expiration of the present term of office of the Circuit Clerk, in view of the record made by the Circuit Court of Lincoln County on December 20, 1950, approving the appointment of said Deputy Circuit Clerk and fixing the period of his employment. Your letter requesting this opinion reads as follows:

"The Deputy Circuit Clerk of Lincoln County has contacted me concerning a problem and I would appreciate the opinion of the Attorney General's Office on this matter.

"The following is an excerpt from the Circuit Court Record of Lincoln County, Missouri, dated the Twentieth day of December, 1950.

"Court convenes with Judge B. Richards Creech presiding."

"##### (Court 1st approved the bond of J.V. Whiteside as Circuit Clerk.)
###"

"IN RE: DEPUTY CIRCUIT CLERK & EX-OFFICIO RECORDER OF DEEDS."

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"Now on this day comes J.V. Whiteside, Circuit Clerk Elect and files and presents to the Court his appointment of Deputies to the Office of Circuit Clerk and Ex-Officio Recorder of Deeds."

"STATE OF MISSOURI,) SS.
"COUNTY OF LINCOLN,)

"TO THE HONORABLE B. RICHARDS CREECH,
JUDGE OF THE CIRCUIT COURT OF LINCOLN
COUNTY, MISSOURI.

"Comes now J.V. Whiteside, duly elected Circuit Clerk and Ex-Officio Recorder of Deeds of Lincoln County Missouri, and informs the Honorable B. Richards Creech, Judge of said Court, that he has appointed Wyatt Rinaman as Deputy Circuit Clerk and Deputy Ex-Officio Recorder of Deeds of Lincoln County, Missouri, to assist him in the prompt and proper discharge of the duties of said office of Circuit Clerk and Ex-Officio Recorder of Deeds of said County, which appointment shall be in affect from January 1, 1951, and is to continue until the expiration of the present term of office of the said J.V. Whiteside as Clerk of the Circuit Court and Ex-Officio Recorder of Deeds.

"WHEREFORE, said J.V. Whiteside, Clerk as aforesaid, requests the Honorable Circuit Judge aforesaid, to approve the appointment of said Deputy Clerk and Deputy Recorder of Deeds and to fix the amount of compensation to be paid said Wyatt Rinaman as such Deputy Clerk and such Deputy Recorder of Deeds, and to fix the amount of official bond to be required of said Deputy Clerk.

"Respectfully submitted

"J.V. WHITESIDE

"Clerk of the Circuit Court

"It is now ordered by B. Richards Creech,

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Judge of the Circuit Court of Lincoln County, Missouri, that the foregoing appointment of Wyatt Rinaman as Deputy Clerk of said Circuit Court and Deputy Ex-Officio Recorder of Deeds of Lincoln County, Missouri, be and the same is hereby approved. The compensation to be paid to said Deputy Clerk and Deputy Recorder of Deeds is fixed at the sum of \$170.00 per month during the period of said appointment. It is further ordered that said Deputy Clerk and Deputy Recorder of Deeds execute Official Bond in the sum of \$2,000.00, to be approved by the undersigned Judge of said Circuit Court.

"It is further ordered that the above appointment and approval thereof be entered upon the record of said Circuit Court, and that a certified copy thereof be delivered to and filed with the Clerk of the County Court of Lincoln County, Missouri.

"Dated this 20th day of December, 1950.

"B. Richards Creech
"Judge of the Circuit Court
"Lincoln County, Missouri."

"#####(Following is the oath of office of the Deputy in proper form.) ###"

"Now the question is whether or not the Circuit Clerk and Ex-Officio Recorder of Deeds, J.V. Whiteside, has the power, in view of the above record, to dismiss the Deputy Circuit Clerk from his position prior to the expiration of the Circuit Clerk's present term of office.

"We would appreciate an answer at your first convenience as the dismissal is scheduled for January 1st, 1952. Thanks for your assistance."

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Lincoln County, Missouri, according to the records of the Secretary of State, as appears in the "Roster of State, District and County Officers of the State of Missouri 1952-1952" issued by him, has an assessed valuation of \$16,611,388.

Section 28.020, RSMo 1949, provides that all counties in this State now having or which may hereafter have an assessed valuation of Ten Million Dollars and less than Fifty Million Dollars shall be in the third class of counties of this State. Lincoln County is, therefore, a county of the third class.

Section ^{483.015}~~384.015~~, RSMo 1949, provides that beginning with the year 1882 and each four years thereafter clerks of all Courts of Record, except clerks of the Supreme Court, the Courts of Appeals, Probate Courts and Magistrate Courts, and except as otherwise provided, shall be elected every four years. The Circuit Clerk of Lincoln County was elected under the provisions of said section at the General Election in said county on November 7, 1950; for a period of four years next ensuing after January 1, 1951, and until his successor shall be duly elected and qualified.

Section 483.345, RSMo 1949, authorizing the appointment of deputies and assistants by the Circuit Clerk in counties of the third class with the approval of the Judge of the Circuit Court of such county, reads as follows:

"Every circuit clerk in counties of the third class shall be entitled to such number of deputies and assistants to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of the duties of his office. The judge of the circuit court, in his order permitting the circuit clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered on record, and a certified copy thereof shall be filed in the office of the county clerk. The circuit clerk may, at any time, discharge any deputy or assistant, and may

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regulate the time of his or her employment and the circuit court may at any time modify or rescind its order permitting an appointment to be made."

It is assumed that the Judge of the Circuit Court in determining the number of Deputies and Assistants to be appointed would act in such matters only upon the application and recommendation of the Circuit Clerk. This was the case here, as is shown by the record entries made by the Circuit Court in approving the appointment, fixing the compensation and the amount of the official bond of said Deputy Clerk.

There is nothing in the record recited in your letter which could prevent the Circuit Clerk from discharging the named Deputy at any time after the approval and the taking effect of the appointment. It will be noted from the excerpts of the Circuit Court record that the Court did not actually designate the period of time the named Deputy Circuit Clerk should be employed. The Court approved the appointment of the Deputy as made by the Circuit Clerk but the record is silent as to the period of time he should be employed. The fact that the Circuit Clerk advised the Court in the application that he, the Clerk, had appointed the Deputy for a period beginning and ending with the term of the Clerk's tenure in office and the fact that the Court did approve the appointment of the Deputy, taken singly or combined, do not constitute an order by the Court designating "the period of time such deputy may be employed" as is required to be ordered under the terms of said Section 483.345. But if the Court had made an order to that effect we believe it would be ineffective, as we will endeavor to point out in this opinion.

The General Assembly of this State is our only authority, outside of the Constitution, for prescribing tenure of office. In providing for the election of Circuit Clerks the Legislature in said Section 483.015 fixed the Clerk's tenure of office at four years.

Section 483.345 authorizes the Circuit Clerk to appoint Deputies and Assistants, with the approval of the Circuit Court and to discharge Deputies and Assistants at any time. The Circuit Judge or Circuit Court has no authority to appoint or discharge a Deputy or an Assistant of the Circuit Clerk. The Judge is authorized by the statute to approve or disapprove the action of the Circuit Clerk

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in making such appointments, but the power to discharge is given by the statute to the Circuit Clerk alone. The Court may modify or rescind its order permitting appointments of Deputies and Assistants to be made, even while the Deputy or Assistant is acting under such appointment and actually employed. With the entry of record of either of those two authorized orders the authority of the Judge of the Circuit Court or the Circuit Court itself in such procedure is thereby ended.

Conceding that the letter of the statute does give the Circuit Judge or Circuit Court the authority by order to "designate the period of time such deputies or assistants may be employed" such power is immediately in the same section rendered unavailing and ineffective by giving the Circuit Clerk the absolute power to discharge any Deputy or Assistant at any time.

This statute, Section 483.345, RSMo 1949, was originally enacted, Laws of Missouri, 1915, page 378, l.c. 379, paragraph 2, as a new section. The section has been retained in succeeding revisions, including the revision of 1949. There have been many amendments to the section since its enactment. It would require the lengthening of this opinion beyond its needs to even list the number of amendments made to this section in the separate Session Acts and Revised Statutes of this State to identify all of them by volume and page. The amendments have been restricted almost entirely to providing who or what Court may determine the number of Deputies or Assistants to be employed by the Circuit Clerk, fix their respective salaries, and the length of the periods of their respective employments. These amendments have, at different times, given such authority to the Circuit Court, the County Court, and the Circuit Clerk, and have transferred such authority back and forth amongst them as each Legislature thought proper. Such authority is now, as stated, lodged in the Circuit Judge or Circuit Court as provided in said Section 483.345, but each statute down to and including our present revision, has vested the power to discharge such Deputies and Assistants exclusively in the Circuit Clerk himself, and he may so act at any time.

This section from the beginning was primarily concerned with the question of fixing and supervising compensation to be paid Deputies and Assistants in the office of Circuit Clerk. This section was never intended to be, never was, and is not now,

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a statute empowering the County Court or the Circuit Court to fix or determine the tenure of office as such of any public official nor to determine the period of employment of such employees merely as a matter of holding office. The several statutes as amended and the existing statute in its present form have used the term "employment" when referring to the period of services of Deputies and Assistants of the Circuit Clerk.

The only public value, as we view it, the exercise of the power to determine the period of employment of such Deputies or Assistants could reasonably have would be to assist in the economies sought to be accomplished in county finances, by controlling the number of Deputies and Assistants to be employed by the Circuit Clerk and their compensation.

The county budget as fixed by the County Court in third class counties must have as nearly a correct estimate and statement as possible of the expenses anticipated for payment out of county funds to the Circuit Clerk and Deputies and Assistants and Deputy Ex-Officio Recorders of Deeds in such counties, where the Circuit Clerks and the office of the Recorder of Deeds are combined, and, thus it will be necessary for the Circuit Clerk to know and state the number of Deputies and Assistants to be authorized by the Circuit Court to be employed by him and their compensation in order to complete the budget and fully comply with the county budget law. In this sense and for these purposes, we believe, Section 483.345 is to be considered only as an aid to the Budget Law and has nothing to do, otherwise, with the question of how long such Deputies or Assistants may be employed, or, whether they may be retained at all, by the Circuit Clerk. This question was involved in and was considered in the Court's decision in the case of State ex rel. Hill vs. Thatcher, Judge, et al., 94 S.W. (2d) 1053. The issue in the case, as recited in the opinion, was whether the Circuit Clerk had the authority to appoint a Deputy and fix her compensation with the approval of the Circuit Court, or whether the approval of her appointment and the fixing of her compensation should be by the County Court. The St. Louis Court of Appeals in that case held that the then existing County Budget Law required an estimate of the expenses of the Circuit Clerk to be submitted for the budget, outlining the compensation to be

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paid to Deputies and Assistants for that year, and which expenses would have to be paid out of county revenues, but that it was the duty of the County Court to approve the appointment and fix such compensation.

Analogous to and as applicable to the question here being considered, on the question that Section 483.345 is principally concerned with the question of compensation of such subordinates under the Budget Law, the Court, l.c. 1055, 1056, said:

"* * * In our view the estimate for the salary of any assistant clerk of the circuit court falls in the same category, since it is specifically provided under section 11812, Laws of Mo. 1933, that every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such officer, with the approval of the county court, and that the county court in its order permitting the clerk to appoint such deputies and assistants 'shall fix the compensation of such deputy or assistant * * * and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it.' Certainly, in light of this specific statute, where the county court shall have, in conformity therewith, approved of an appointment of a deputy or assistant of a circuit clerk and has fixed the compensation of such deputy or assistant, the estimate of expenditures submitted by the circuit court and the clerk of the circuit court to the budget officer under the Budget Law must designate therein that amount so fixed by the county court.

"In this connection we call attention to the fact that when the Legislature in 1933 repealed the then existing section 11812, Rev. St. of Mo. 1929 (Mo. St. Ann. Sec. 11812, p. 7031), and enacted

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a new section of the statute under the same number, a comparison of the new with the old section will disclose that the only change accomplished was to take the approval of the selection of deputies and assistants of the clerk of the circuit court and the fixing of the compensation of such deputies and assistant clerks from the circuit court and place it in the hands of the county court.

"We are clear in our view, and so hold, that under the existing statutes the approval of the appointment and the fixing of the compensation for deputies and assistants of the clerk of the circuit court of St. Louis county lies with the county court, and that this view is in keeping with the ruling of our Supreme Court in the Graves Case, supra, and does not violate the provisions of section 18 of the Budget Act."

We believe the above-cited case supports our view that said Section 483.345 is concerned only with the question of compensation to be paid Deputies and Assistants of the Circuit Clerk as elements of the procedure in fixing the county budget and has no part or office to perform on the question of fixing the period of time, as such, that such Deputies and Assistants may be employed. We believe that the provision in said section authorizing the Circuit Judge or Circuit Court to designate in his order permitting the Circuit Clerk to appoint Deputies and Assistants and fix their compensation and also to designate the period of time such Deputies or Assistants may be employed means that if the Clerk needed Deputies or Assistants he would make such fact known to the Judge or the Circuit Court and would advise the Judge or the Court that he had employed such Deputies or Assistants then and with that knowledge the Court may, in the order approving such appointments, designate the period of such employments. But even so, the Circuit Clerk may, under the statute, discharge a Deputy or an Assistant at any time.

The case of State ex inf. Barrett, Attorney General, vs. Hedrick, 294 Mo. 21, was before the Supreme Court of this

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State on the question of the right of the Governor to discharge the State Warehouse Commissioner where the statute authorizing the appointment of such official by the Governor did not fix his tenure of office.

The question in that case was, of course, one of construction of the right of the appointing power to remove an appointee where nothing else but the power to appoint was conferred upon the appointing officer. In the question we are considering here said Section 483.345 does provide the express power for the Circuit Clerk to remove Deputies or Assistants at any time.

The Court in the Hedrick case, supra, took note of the distinction to be made between a case where there was no authority to discharge conferred but the right to discharge may be implied and a case where the statute does give express authority to the appointing officer to discharge his appointees. The Court made this distinction clear, and plainly stated the rule that where the power to discharge is expressly conferred by the statute there is nothing to construe, and that where express power to discharge is conferred upon the appointing officer by statute there is then an end to all controversy on such question. The Court in its opinion on this point, l.c. 65, said:

"It thus appears that when the Legislature provides for the appointment of one official by another, if it does nothing more, adopts no means to forestall it, the act authorizing the appointment will inevitably raise the power to remove at pleasure. This power is none the less a part of the act, and none the less within the title because it arises by construction. It is clear that if it is not germane it could not arise out of the power to appoint, because the constitutional provision in that case would invalidate it. It is also clear that the rule itself could not exist except the power arose out of the simple conferring of the power to appoint, since express language authorizing removal at pleasure would leave no reason or ground for implying the power." (Emphasis ours.)

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The express power given to the Circuit Clerk to discharge his Deputies or Assistants at any time, regardless of any other language or provision in said section, is, we believe, absolute and is not to be denied.

CONCLUSION.

It is, therefore, the opinion of this Department, considering the above authorities, and particularly the terms of Section 483.345, RSMo 1949, that Clerks of the Circuit Courts in Missouri have the express authority to discharge Deputy Circuit Clerks and Assistants and Deputy Ex-Officio Recorders of Deeds employed in their offices at any time, and that the record in the instant case made by the Circuit Court of Lincoln County, Missouri approving the appointment of the named Deputy Circuit Clerk contains nothing to prevent the Clerk from discharging such Deputy.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:



J.E. TAYLOR
Attorney General

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