

RECORDING DEEDS - 3RD  
CLASS COUNTIES - SEPARATE  
CIRCUIT CLERK AND RECORDER.  
SALARY AND NUMBER OF  
DEPUTIES:

) Recorders in 3rd class counties where there  
) is a separate Circuit Clerk and Recorder  
) determines the amount of salary for deputy  
) hire which must be reasonable. The Recorder  
) in said counties shall also determine the  
) number of deputies necessary to perform the  
) duties of the office promptly, carefully and  
) well. Such reasonable payment to necessary  
) deputy or deputies may be deducted from  
) Recorder's fees, balance paid County Treasurer.

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January 6, 1953 1-7-53

Honorable Albert L. Hencke  
Prosecuting Attorney  
Franklin County  
Union, Missouri

Dear Sir:

This is in reply to your request for an opinion of  
this office, which request is as follows:

"The Recorder of Deeds of Franklin  
County has asked that I request an  
opinion from the Attorney General's  
Office regarding the following:

"Does the Recorder of Deeds or the  
County Court determine the salary of  
the Deputy Recorder in third class  
counties?

"Is the Recorder of Deeds of third  
class counties allowed more help  
than just one deputy, and if so,  
how much and how shall that extra  
help be paid?"

Franklin County has a separate Circuit Clerk and  
Recorder.

Section 11 of Article VI, Constitution of Missouri,  
deals with compensation of county officers, fees collected,  
and salary paid to their necessary deputies or assistants  
and is as follows:

"Except in counties which frame, adopt  
and amend a charter for their own govern-  
ment, the compensation of all county  
officers shall be prescribed by law  
uniform in operation in each class of

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counties. Every such officer shall file a sworn statement in detail, of fees collected and salaries paid to his necessary deputies or assistants, as provided by law."

The above constitutional provision and Section 59.250, RSMo 1949, control the salary of the Recorder and pay of his "deputies and assistants" in third class counties wherein there is a separate Circuit Clerk and Recorder. Said Section 59.250 is 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 four thousand dollars except those set out in Section 59.490, 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."

We shall deal with the questions in the order in which they appear in your request. Your first question is as follows:

"Does the Recorder of Deeds or the County Court determine the salary of the Deputy Recorder in third class counties?"

Under the provisions of said Section 59.250 the Recorder of Deeds shall fix a reasonable amount to be paid deputies and assistants which are necessary "to secure the proper and expeditious performance of the duties of office." After deducting Four Thousand (\$4,000) Dollars for the Recorder's salary and a reasonable amount for necessary deputy or deputies to perform the duties of the office "promptly, carefully and well," the Recorder shall pay the balance into the county treasury.

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In State ex rel. Vernon County v. King, 136 Mo. 309, 318-320, Macfarlane, J., speaking for the Supreme Court of Missouri, said:

"Under these provisions, is a recorder entitled, as a matter of right, to retain out of the fees of his office an amount sufficient to pay reasonable compensation to necessary assistants, or is the allowance left entirely to the discretion of the county court?

"The constitution is positive in its terms, and contains no words from which a discretionary power can be implied. The statute can not be given such construction as will cause a conflict with the constitution. The statute existing when the constitution was adopted would be repealed by such a construction. To give the statute effect, then, the word 'may' can not be given a meaning which could deprive the recorder of his right to an allowance for assistants if they were necessary to secure the proper and expeditious performance of the duties of the office. It is also a well recognized rule of construction that the word 'may' should be interpreted to mean 'shall' when referring to a 'power given to public officers, and [which] concerns the public interest and the rights of third persons, who have a claim de jure that the power shall be exercised in this manner.' Such an interpretation is demanded 'for the sake of justice and the public good.' Steines v. Franklin Co., 48 Mo. 178, quoting from Newburgh Turnpike Co. v. Miller, 5 Johns. Chy. 113.

"There can be no doubt that the public interest demands that the work required of a recorder should be done promptly, carefully, and well. A public officer is, by right, entitled to compensation for the labor performed, and it should also be measured to some extent by the responsibilities assumed. The statute regulates the amount of the fees the recorder is entitled to collect, and the presumption is that he fairly earns what he is allowed to charge. Four thousand dollars was fixed

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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.

"In construing a statute which provided that when a county officer receiving a salary is compelled, by pressure of business to employ a deputy, 'the county court may make a reasonable allowance to the deputy,' the court held that the county must pay a reasonable compensation for the necessary service rendered, and that payment was not discretionary with the county court. Bradley v. Jefferson Co., 4 G. Greene, 300. See, also, Washington Co. v. Jones, 45 Iowa, 261.

"We are of the opinion, therefore, that the allowance to the recorder of reasonable compensation for necessary hire of assistants was not a matter of mere discretion with the county court. In his settlement, the recorder was entitled to a credit for the amount so paid; and, if such credit had been given, there would be, at most, but a small amount, if anything, due the county."

(Underscoring ours.)

Under the above authority we are of the opinion that it is the duty of the Recorder to fix the amount to be paid to his deputy or deputies--such amount, of course, to be reasonable for necessary services rendered, and it is the duty of the county court to allow the Recorder to deduct such amount for necessary deputy hire.

Your second question is as follows:

"Is the Recorder of Deeds of third class counties allowed more help than just one deputy, and if so, how much and how shall that extra help be paid?"

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This query has been practically answered by the above-quoted Section 59,250 and that part of State ex rel. v. King, supra, which is hereinabove set out.

The statute provides that the remainder of the fees after the Four Thousand (\$4,000) Dollars salary is deducted and "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."

If the Recorder finds it necessary to employ more than one deputy "to secure the proper and expeditious performance of the duties of the office," then the Constitution and the Statute authorize him to employ additional deputies and assistants, and it is made the duty of the county court to "pay a reasonable compensation for the necessary services rendered and that payment was not discretionary with the county court."

#### CONCLUSION

It is the opinion of this office that the Recorder of Deeds in counties of the third class wherein there is a separate Circuit Clerk and Recorder shall fix a reasonable allowance for deputy hire. The Constitution and the Statute authorize the Recorder to employ sufficient help to perform the duties of the office "promptly, carefully and well." It is the duty of the county court to permit such reasonable and necessary amount for deputy hire to be deducted from the fees of the Recorder's office.

Respectfully submitted,

GROVER C. HUSTON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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