

CLERK OF PROBATE COURT:

No salary provided for clerk of probate court in county of third class having population in excess of 10,750 but less than 15,000 inhabitants with a valuation of \$11,000,000.



March 26, 1954

Honorable Gordon R. Boyer  
Prosecuting Attorney  
Barton County  
Lamar, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department which we have summarized in the following language:

May a person serving as clerk of the probate and magistrate courts in a county of the third class having a population in excess of 10,750 but less than 15,000 persons with an assessed valuation in excess of \$11,000,000, receive any salary as clerk of probate court?

Provision for the appointment of clerks of probate courts has been made by Section 26, Article V, Constitution of Missouri, 1945, which reads as follows:

"Clerks of appellate and probate courts.--Appellate and probate courts shall appoint their own clerks."

As also bearing upon the subject matter of your inquiry we direct your attention to Section 17, Article V of the Constitution of Missouri, 1945, which reads as follows:

"Probate courts--uniformity--clerks.  
--Probate courts shall be courts of record and uniform in their organization,

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jurisdiction and practice, except that a separate clerk may be provided for, or the judge may be required to act ex officio as his own clerk."

In providing for clerks of probate courts in certain counties, the General Assembly has enacted what is now Section 483.475,

"Probate clerks, assistants and stenographers--compensation

"1. In all counties now or hereafter having more than thirty thousand inhabitants, the probate judges 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.  
\* \* \*"

Further provisions of the statute provide for appointment of clerks of probate courts in various other populations and assessed valuation categories, but at no place does there appear any provision for the appointment of a clerk of the probate court in a county of the population and assessed valuation as Barton County.

It appears that the scheme for the payment of clerks of probate courts in counties similarly situated has been integrated with the provisions for the establishment of magistrate courts in such counties. We direct your attention to Section 482.010, RSMo 1949, particularly Paragraph 2 thereof, which reads, in part, as follows:

"2. In counties of thirty thousand inhabitants or less the probate judge shall be the judge of the magistrate court. \* \* \*"

Having placed the duties of the magistrate court upon the judges of probate in counties of less than 30,000 inhabitants, further provision is made for the appointment of clerks of

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such courts by Section 483.485, RSMo 1949, which reads in part, as follows:

"Clerks and deputies appointed by magistrate--compensation--oath--bond--duties.--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. \* \* \*"

Further provision for the payment of salaries of such clerks has been made under the provisions of Section 483.490, RSMo 1949, as amended by House Bill No. 431, Paragraph 1, of the 67th General Assembly.

We direct your attention as being applicable to counties of the category in which Barton County is situated by virtue of its population and assessed valuation to Sub-paragraph 4 of said Section 483.490, V.A.M.S., Pocket Parts, as amended.

"Salaries of clerks and deputy clerks to be paid by state--exceptions--salaries, how determined

\* \* \*

"(4) In all counties now or hereafter having a population of more than ten thousand seven hundred and fifty inhabitants but not more than fifteen thousand inhabitants, with an assessed valuation of more than eleven million dollars, the sum of two thousand one hundred dollars; \* \* \*."

From the foregoing we are persuaded to the belief that the salary provided for the clerk of the magistrate court is exclusive when such person also discharges the duties of clerk of the probate court. No additional salary for such latter services is allowed under the statutes.

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CONCLUSION

In the premises we are of the opinion that a person serving as clerk of the probate court in a county of the third class having a population between 10,750 and 15,000 inhabitants, with an assessed valuation in excess of \$11,000,000 is not entitled to any salary as such clerk. If such person is also designated as clerk of the magistrate court under the provisions of Section 483.485, RSMo 1949, the compensation is payable for services in that capacity.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

WFB:vlw