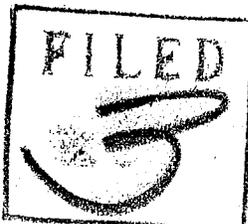


MAGISTRATES: State to pay salaries of employees of the
MAGISTRATE COURTS: Magistrate Court of Greene County as follows:
one chief clerk, \$3300 per annum; one deputy
clerk for each magistrate, \$2400 per annum;
and such other employees as the court may
appoint in an amount not to exceed \$1500 per
annum.



March 1, 1955

Hon. Newton Atterbury
State Comptroller
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, in which the following inquiry is made:

What is the total compensation that may be paid by the state for clerk, deputy clerk and employee hire of the magistrate court of Greene County?

We first wish to note that Greene County is a county having a population of more than 70,000 and less than 150,000 inhabitants with two divisions of circuit court which sits at only one place in the county.

Section 483.485, V.A.M.S., 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. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this section for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be

Hon. Newton Atterbury

required and to provide funds for the payment of salaries or parts of salaries of clerks, deputy clerks and other employees, in addition to the amounts payable by the state under this section. * * * In all counties where magistrates organize into a court with divisions there shall be but one clerk of the magistrate court who may act as clerk for one of the magistrates. There shall not be more than one deputy clerk for each magistrate and all deputies shall be under the direction of the clerk but shall be appointed by the court."

This section authorizes the magistrates of all counties to appoint such clerks, deputy clerks and employees as may be necessary for the proper dispatch of the business of the court, and places a limit on the total salaries to be paid by the state. Said section further provides that in counties where magistrates organize into a court with divisions there shall be one clerk of the court and that there shall not be more than one deputy clerk for each magistrate.

Section 483.490, RSMo 1953 Cum. Supp., fixes the maximum limit on salaries paid by the state for such clerks, deputies and employees as follows:

" * * * * "

"(10) In all counties now or hereafter having a population in excess of one hundred thousand inhabitants; except as otherwise provided by law, the sum of four thousand eight hundred dollars for each magistrate in the county.

* * * * * "

Section 483.495, which embraces a class of counties within which the county of Greene falls, makes it mandatory that the magistrates of such county organize into a court with divisions. Said section provides as follows:

"1. In each county of this state now or hereafter having more than seventy thousand and less than one hundred and fifty

Hon. Newton Atterbury

thousand inhabitants, except in counties where circuit court is held in more than one place, and except in such counties which have or may hereafter have more than two divisions of circuit court, the magistrate shall organize as a court with divisions.

"2. And there shall be a chief clerk of the magistrate court who shall be appointed by the various magistrates jointly, and who shall serve at the pleasure of the magistrates and until his successor is duly appointed and qualified. If within thirty days after this section becomes effective the magistrates are unable to agree upon the person to be appointed, the judges of the circuit court of the county shall appoint such chief clerk.

"3. Under the supervision of the magistrates the chief clerk shall perform all duties and have all powers imposed upon clerks of magistrate courts generally. Each magistrate shall appoint a deputy clerk who shall perform his services under the supervision of the chief clerk. The chief clerk shall receive a salary of three thousand three hundred dollars per annum payable monthly, by the state; each deputy clerk shall receive a salary of two thousand four hundred dollars per annum payable monthly by the state; except that in no event shall the state pay more than two deputy clerks."

It is to be noted that this section provides that there shall be a chief clerk of the court appointed jointly by the magistrates who shall be paid \$3300 per annum payable monthly by the state. This section then provides that each magistrate shall appoint a deputy clerk, who shall be paid \$2400 per annum, payable monthly by the state; with the further proviso that in no event shall the state pay more than two deputy clerks.

We wish first to note a cardinal rule of statutory construction, which will serve to guide us in the interpretation

Hon. Newton Atterbury

of the aforementioned statutory provisions, viz., where there are two laws relating to the same subject, they must be read together and provisions of the one having a special application to a particular subject will be deemed to be a qualification of or an exception to the other act general in its terms. *Fleming v. Moore Bros. Realty Co.*, Mo.Sup., 251 S.W. 8.

Under this rule any conflict or repugnancy between Sections 483.485 and 483.495 would have to be resolved in favor of the latter section, since it applies specially to Greene County, whereas the former section is general in nature, applying to all counties.

We are of the opinion that there exists no conflict between the term "clerk of the magistrate court" as used in Section 483.485 and "chief clerk of the magistrate court" as found in Section 483.495, but that the terms "clerk" and "chief clerk" as used are used synonymously. Section 483.485 provides that there shall be one "clerk" of the court, and Section 483.495 by its terms is not in conflict therewith.

Section 483.485 provides that there "shall not be more than one" deputy clerk for each magistrate, and Section 483.495 provides that "in no event shall the state pay more than two deputy clerks." Therefore, again, so far as the state is concerned, in determining the maximum compensation that is to be paid, no conflict exists.

Section 483.495 does not expressly undertake to authorize or limit other employees of the court, and we are of the opinion that such authorization or limitation does not exist by implication. Likewise that portion of Section 483.485 relating to courts with divisions does not refer to other employees. However, the latter section generally does authorize the employment of other employees and limits such employees, insofar as the state is concerned, with the total salaries provided in Section 483.490, supra.

Therefore, we are of the opinion that the magistrate court of Greene County may appoint such employees, other than clerks and deputy clerks, which employees may be paid by the state in an amount not to exceed the difference between the total salaries paid for clerk and deputies as provided by Section 483.495, and the total compensation payable by the state under Section 483.490.

Hon. Newton Atterbury

CONCLUSION

Therefore, it is the opinion of this office that the State of Missouri is authorized to pay upon requisition of magistrate judges of Greene County employees of said court as follows: One chief clerk, \$3300.00 per annum; one deputy clerk for each magistrate, \$2400.00 per annum; and such other employees as the court may appoint in an amount not to exceed \$1500.00 per annum.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

DDG/vtl