

PROBATE: Probate judge in county having more than thirty
PROBATE JUDGE: thousand and less than seventy thousand in-
PROBATE COURT: habitants, and assessed valuation over thirty
million dollars, may not pay in excess of
three thousand dollars per annum for clerk hire.



March 22, 1957

Honorable David L. Colson
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Mr. Colson:

This is in response to your request for opinion dated February 4, 1957, which reads as follows:

"I wish to make request for an official opinion regarding the payment of a salary to the Probate Clerk of this county.

"The Probate Judge of St. Francois County has raised the salary of his clerk to the amount of two-hundred and seventy-five dollars (\$275.00) per month. According to Section 483.475 R.S. Missouri, 1949, the clerk of a third class county is entitled to three thousand dollars (\$3,000.00) annually. Apparently the payment of the present salary is in violation of this section.

"If you would please favor me with an early opinion on this matter, I would certainly appreciate it."

Section 483.475, RSMo, Cum. Supp. 1955, reads as follows:

"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

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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.

"2. In all counties now or hereafter having more than thirty thousand and less than seventy thousand inhabitants, the total salaries of all clerks, assistants and stenographers in the probate court for any one calendar year shall not:

(1) In counties with an assessed valuation of twenty million dollars or less, exceed the sum of one thousand two hundred dollars;

(2) In counties with an assessed valuation of more than twenty million dollars and not more than thirty million dollars exceed the sum of two thousand four hundred dollars;

(3) In counties with an assessed valuation of over thirty million, exceed the sum of three thousand dollars.

"3. In all counties of class two such salaries for such year shall not exceed the sum of six thousand six hundred dollars. In any county where need exists, the county court is authorized to provide such additional clerks, deputy clerks or other employees in the probate court as the county court in its discretion believes are required and is authorized to provide funds for payment of salaries or parts of salaries of such clerks, deputy clerks and employees in addition to the amounts hereinbefore specified.

"4. In any county now or hereafter having two hundred and fifty thousand or more inhabitants, the total salaries of all clerks, assistants and stenographers for any calendar year shall not be such that the total salaries of such judge and his appointees shall exceed the total sum of fees received and accounted for by such judge for such year."

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That section was construed in the light of its legislative history in an opinion of this office rendered to Scott O. Wright dated October 23, 1956, copy of which is enclosed. As in that opinion, with relation to Boone County, we take notice of the fact that St. Francois County has more than thirty thousand and less than seventy thousand inhabitants, with an assessed valuation in excess of thirty million dollars.

In the first subsection of Section 483.475, supra, the authority is granted to the probate judge in counties having more than thirty thousand inhabitants to appoint clerks, etc., and to fix the salaries. However, Subsection 2(3) thereof provides that the total salaries for clerks in counties having more than thirty thousand and less than seventy thousand inhabitants, with an assessed valuation of over thirty million dollars, shall not exceed three thousand dollars for any one calendar year.

If Section 483.475, supra, ended at this point, there could be no question but that the Legislature intended that there be an absolute limit of three thousand dollars per year for hiring of clerks, etc., in the office of probate judge.

However, as pointed out in the Wright opinion, referred to above, this section was first amended in 1947 so as to give the county court authority to hire additional clerks and other employees where probate courts may be held in more than one place in the county and to pay the salaries of such employees in addition to the amounts previously fixed therein. In 1951, it was again amended, removing therefrom the requirement that probate court be held in more than one place in the county before the county court could employ additional clerks, etc., and for counties of this class, raising the limit in Subsection 2(3) to three thousand per annum.

As the section now reads, the probate judge has the authority to hire as many clerks, assistants and stenographers as he sees fit and to pay such clerks, etc., a total of three thousand dollars in any one calendar year. However, regardless of whether he has one or more than one clerk, assistant or stenographer, he does not have the authority to exceed the stated maximum of three thousand dollars. If additional clerks, deputy clerks, or other employees are required in order to conduct the business of the court, the authority to provide, the discretion as to whether they shall be provided and the amounts to be paid in excess of three thousand dollars is vested in the county court under Subsection 2 of Section 483.475, supra.

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CONCLUSION

It is the opinion of this office that the probate judge in a county having more than thirty thousand and less than seventy thousand inhabitants, with an assessed valuation of over thirty million dollars, may pay up to, but not in excess of, three thousand dollars in any one calendar year for clerk hire.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml

Enc.