

MAGISTRATES:
DEPUTIES:
COMPENSATION:
COUNTIES:
COUNTY COURTS:

Where a magistrate whose office is created by order of the circuit court appoints a deputy clerk or other employee and fixes the salary within statutory limits, county court must pay such salary and may not reduce it.

Opinion No. 275

August 7, 1963



Honorable James G. Lauderdale
Prosecuting Attorney
Lafayette County
Courthouse
Lexington, Missouri

Dear Mr. Lauderdale:

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

"Sec. 483.485 R. S. 1959 provides among other things: In all counties each Magistrate shall by 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. That in any county where the 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 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. All such Clerks, deputies and employees shall serve at the pleasure of the Magistrate.

Sec. 483.490 R. S. 1959, provides among other things: The salaries of Clerks, deputy Clerks and employees of additional Magistrates whose offices are created by order of the Circuit Court as provided in

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section 482.010 R. S. Mo. shall be paid by the county as salaries of such Magistrates are required to be paid. The salaries of such Clerks, deputy Clerks, and employees shall be fixed by the Magistrate, or Magistrate Court if the Magistrates are organized into a Court with divisions.

The Magistrate Court of Lafayette County, Missouri, is an additional Magistrate Court created in 1947 by an order of the Circuit Court. This Court has one full time Clerk and one additional employee doing stenographic work, filing etc. both of whom have been appointed, and their salaries fixed by an order of the Magistrate duly entered and a copy of each filed with the Clerk of the County Court. The County Court has been reluctant to pay the salary of the additional employee for a full twelve months of the year but only part time. The Magistrate has shown a need for full time employment of the additional employee.

The Magistrate having complied with the statutes in making the appointment, fixing the salary and filing a copy with the Clerk of the County Court, is it mandatory that the County Court authorize the payment of this salary while the additional employee is working at the pleasure of the Magistrate, or, does the County Court have a discretionary power whereby they can refuse to acknowledge the appointment of the Magistrate and to refuse to pay the salary as fixed by order of the Magistrate.

The regular full time Clerk of this Court now receives \$290.00 per month salary and the additional employee receives \$175.00 per month salary."

As it applies to Lafayette County which has a population as shown by the 1960 census of 25,274, Section 483.490, Cum. Supp. 1961, reads as follows:

"1. Salaries of clerks, deputy clerks and employees provided for in section 483.485 shall be paid by the state

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within the limits herein provided upon requisition filed by the judges of the magistrate courts; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in section 482.-010, RSMo, shall be paid by the county as the salaries of such magistrates are required to be paid. The total amount that may be paid by the state in any one year for such clerks, deputy clerks and employees of the magistrate courts in the different counties shall not exceed the following sums:

* * * * *

"(6) In all counties now or hereafter having a population of more than fifteen thousand inhabitants but not more than thirty thousand inhabitants, with an assessed valuation of more than twenty-four million dollars, the sum of four thousand four hundred dollars, provided, that in all such counties in which the probate court is required by law to be held in more than one place such salaries shall not exceed the sum of six thousand nine hundred dollars:

* * * * *

"2. The salaries of such clerks, deputy clerks and employees shall be fixed by the magistrate, or magistrate court if the magistrates are organized into a court with divisions. When the judge of the probate court is also judge of the magistrate court, such judge, in his discretion, may designate one or more of such clerks, deputy clerks, or employees as clerks, deputies or employees in the probate court."

In view of the very clear provisions of subparagraph 2, supra, to the effect that the salaries of "clerks, deputy clerks and employees shall be fixed by the magistrate, or

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magistrate court if the magistrates are organized into a court with divisions . . . , we believe that there is no room for the exercise of discretion on the part of the county court as to whether the deputy involved here is to be paid or as to how much the deputy is to be paid, as long as the salary is within statutory limits.

This view is fortified by the first sentence of Section 483.485, RSMo 1959, which reads 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."

Thus, we are of the opinion that the compensation of a deputy clerk or other employee appointed by a magistrate is set by the magistrate and not by the county court (regardless of whether the appointing magistrate is one whose office is created by order of the circuit court or by the provisions of subsection 2, Section 482.010, R.S.No. 1959).

It is true that under other provisions of Section 483.485, R.S.No. 1959, the county court, where it finds such a need exists, "is authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be 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" As to such clerks and employees, the county court may choose to provide them to the magistrate or not to provide them. Likewise, the compensation of such clerks and employees is a matter within the control of the county court.

However, a distinction must be drawn between clerks and employees provided by the county court and those appointed by a magistrate. As pointed out above, the

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salary of the latter class is set by the magistrate. The salaries of clerks, deputies, and employees of a "statutory" magistrate (i.e., one whose office is created by subsection 2, Section 482.010 R.S.No. 1959) are derived from state funds. Salaries for clerks, deputies, and employees appointed by an "additional" magistrate (i.e., one whose office is created by order of the circuit court) are paid from county funds. Subsection 1, Section 483.490, supra.

CONCLUSION

It is, therefore, the opinion of this office that where a magistrate, whose office is created by order of the circuit court, appoints a deputy clerk, (or other employee) and fixes his salary within statutory limits, it becomes a ministerial function of the county court to pay such salary. The county court may exercise no discretion as to whether such salary shall be paid nor may the county court reduce the amount of the salary.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Very truly yours,

THOMAS F. EAGLETON
Attorney General