

COUNTY CLERK:  
DEPUTY COUNTY CLERK:  
JOHNSON GRASS:

A deputy county clerk may accept additional employment from the County Weed Control Board and receive compensation for his services. This compensation is separate from and is not to be considered subject to the limitations imposed by Section 51.450, RSMo relating to the compensation of deputy county clerks.

Opinion No. 80

March 9, 1964

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Dear Sir:

This is in answer to your request for an opinion, January 27, 1964, which we quote:

"This county has come under the Johnson Grass Control Law. For the purpose of handling some administrative details, the county weed control board is desirous of hiring a deputy county clerk of this county for such purpose. At present, said deputy clerk is receiving less than the maximum as set out in Section 51.450, Missouri Revised Statutes - 1959. However, the salary from the weed control board will put her above the maximum.

"The question is whether the remuneration received through administration of the Johnson Grass Control Law (263.255 to 263.267 inclusive) is applicable to Section 51.450."

In 1959, Section 263.265, RSMo was amended and now reads as follows:

"The county court, township board and special road district of any county declared a Johnson grass extermination area, in addition to any and all taxing powers which it may possess shall be authorized to levy upon all property subject to its authority a tax in an amount not to exceed five cents on each one hundred dollars assessed valuation, for the purpose of paying the expenses of the county weed control board or the agent of the board in

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making the inspection required under the provisions of section 263.259, and for the expense of controlling and eradicating Johnson grass on county roads and right of ways, provided that not more than twenty-five per cent of the taxes so levied and collected shall be used for administrative purposes. The cost of control and eradication of Johnson grass on all lands and highways owned or supervised by the state highway department shall be paid by the highway department out of funds appropriated for its use." (Emphasis supplied)

In addition, the Commissioner of Agriculture, as provided for in §263.259(4), RSMo, has issued rules and regulations for carrying out the provisions and requirements of the Johnson grass control law. Rule II(2) places upon the Weed Control Board the duty to "[s]elect such personnel as deemed necessary to expedite the county weed control program."

This program is under a county Weed Control Board, as authorized by Section 263.257, RSMo 1959.

A deputy county clerk acting in that capacity is under the supervision and control of the county clerk. The county clerk, in fact, sets the salary of the deputy county clerk. Here, however, the employees of the Weed Control Board are chosen and directed by the Board. It is to be noted that there is no limitation on the selection by the Board; also, that there is no specific person charged with serving the Board.

There is no statute especially prohibiting a county clerk (or deputy) from contracting with or from receiving compensation from the county in addition to his regular compensation for any work performed by him in addition to his official duties. Of course, if there are any additional duties of the office of county clerk that must be performed in connection with the Johnson grass control law, no additional compensation can be allowed for their performance.

The general rule of law is stated in 67 C.J.S., Officers §88, as follows:

"Where the duties of an officer are increased by the addition of other duties germane to the office without provision for compensation, the officer must perform such duties without extra compensation. So, an officer is not

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entitled to extra compensation because additional duties pertaining to the office have been assumed by him or imposed on him by the exigencies of the office. Services required of officers by law for which they are not specifically paid must be considered compensated by the fees allowed for other services.

"On the other hand, an officer is not obliged, because his office is salaried, to perform all manner of public service without additional compensation, and for services performed by request, not part of the duties of his office, and which could have been as appropriately performed by any other person, he may recover a proper remuneration. In this connection, although service not required by the law cannot be classed as official duties, nevertheless public policy requires that courts should not favor nice distinctions in order to declare certain acts of public officers extraofficial.

"Extra services, as applied to services of officers, are services incident to their offices for which compensation is not provided by law."

A copy of an official opinion rendered February 12, 1959, to John S. Williamson is attached. This opinion discusses rather exhaustively the right of county officials to receive compensation for work done for the county outside of their official duties.

It would appear that a county clerk or deputy county clerk is not prohibited from receiving compensation from the county for additional services performed by him, provided the services he performs are not within his official duties. Administering the Johnson Grass Control Law is not within the duties of the county clerk.

#### CONCLUSION

It is our opinion that a deputy county clerk may accept additional employment from the County Weed Control Board and receive compensation for his services. This compensation is separate from and is not to be considered subject to the limitations imposed by Section 51.450, RSMo, relating to the compensation of deputy county clerks.

Bill D. Burlison, Esq.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas E. Eichhorst.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General

Enclosure