

October 1, 1965

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Honorable Earl A. Bollinger
Representative - Madison County
Capitol Building
Jefferson City, Missouri

Dear Representative Bollinger:

This is in answer to your request of May 25, 1965, for an opinion on the question of whether the Circuit Clerk and Ex-Officio Recorder of Deeds of Madison County must be paid compensation as allowed by Section 483.332, RSMo Cum Supp 1963, for the years 1959 to 1964. You subsequently advised this office by telephone that during the years in question the recorder had been furnishing a list as required by Section 137.117, RSMo 1959.

Section 483.332, supra, sets an annual compensation for a special duty of the clerk and makes one-twelfth of it payable each month. Section 483.332 reads as follows:

"For the performance of the duties imposed upon him by section 137.117, RSMo, the circuit clerk and ex officio recorder shall receive, in addition to all other compensation now allowed by law, the following annual compensation, payable out of the county treasury in monthly installments:

"(1) In counties where the assessed valuation is less than fifteen million dollars, seven hundred dollars;"

Under this statute the clerk is entitled to overdue compensation. Coleman v. Kansas City, 353 Mo. 150, 182 S.W. 2d 74. Also see Coleman v. Kansas City, Mo., 351, 254, 173 S.W. 2d 572; Coleman v. Kansas City, 348 Mo. 916, 156 S.W. 2d 644.

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However, Section 50.690, RSMo Cum Supp 1963, seems to preclude payment. Section 50.690 reads, in part, as follows:

"Every officer claiming any payment for salary or supplies shall furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year beginning January first and ending December thirty-first, and the sections of law under which he claims his office is entitled to the amount requested; * * * No officer shall receive any salary or allowance for supplies until all the information required by this section has been furnished. * * *"

Although not ruling directly on Section 50.690, the court in Gill v. Buchanan County, 346 Mo. 599, 142 S.W. 2d 665, dealt with the same problem. There the court held that the Budget Law does not preclude the county's obligation to pay salaries fixed by the Legislature. The court also held that the county officer was not estopped from recovering his salary by reason of his failure to budget for it.

It is our opinion that Gill v. Buchanan County, supra, controls here and the clerk is not precluded by Section 50.690, supra, from collecting his salary.

The question then is whether a statute of limitation applies.

Section 516.120, RSMo 1959, is the five year limitation statute and subsection (2) reads as follows:

"(2) An action upon a liability created by a statute other than a penalty or forfeiture;"

This five year limitation was applied in the Coleman case, 182 S.W. 2d 74, supra, where the Court had before it a statute with compensation similar to Section 483.332, supra. The statute in that case was the predecessor of Section 82.380, RSMo 1959. Section 82.380 sets a salary of a certain sum "a year, payable monthly." The court l.c. 78, said that:

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"The salaries were payable monthly and a right of action accrued to the employee at the end of each month."

The Court then quoted 34 Am. Jur., page 92, sec. 113, for the general proposition that:

"a cause of action accrues the moment the right to commence an action comes into existence, and the statute of limitations commences to run from that time."

Each month the clerk had a cause of action for the prior month's compensation. Since the action is based upon a liability created by a statute, the five year period applies.

Also, this statute of limitations defense may not be waived. See enclosed Attorney General Opinion to the Honorable Rex A. Henson dated September 13, 1954.

Therefore, it is our opinion that the Circuit Clerk and Ex-Officio Recorder of Deeds is entitled to back compensation under Section 483.332, RSMo Cum Supp 1963, subject to the five year statute of limitations set out by Section 516.120, RSMo 1959.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosure: Opinion dated Sept. 13, 1954