

COUNTY CLERKS: Section 165.087, RSMo 1959, was repealed by implication  
FEES: of the statutes placing the office of county clerk on a  
SCHOOLS: salary basis. This section was formally repealed by  
Senate Bill No. 3, 72nd General Assembly, Laws 1963,  
p.200.

OPINION NO. 356

September 1, 1966

Honorable Charles H. Sloan  
Prosecuting Attorney  
Ray County Courthouse  
Richmond, Missouri



Dear Mr. Sloan:

This official opinion is issued in response to your request for an official ruling of this office.

Your question relates to the former statute, Section 165.087, RSMo 1959, which was repealed by Senate Bill 3 of the 72nd General Assembly, effective July 1, 1965. Laws 1963, page 200.

You state that your county clerk has never made an application for compensation under this former statute because he did not know of its existence. You inquire as to whether or not he may now make a claim for any past compensation due him under this Section.

It is unnecessary for us to determine the rights of a public official to compensation which is belatedly claimed, for the reason that Section 165.087, RSMo 1959, was repealed by implication prior to its formal repeal by Senate Bill 3.

Section 165.087, RSMo 1959, provided as follows:

"The county clerk shall receive as full compensation therefor ten cents for every hundred figures in school tax column on general tax book, to be paid by the county treasurer upon warrant issued by the county court."

This statute was enacted in 1909. Laws 1909, page 770.

Formerly, compensation of county clerks was on a fee basis. Presently, and indeed for several years, the basic compensation of county clerks has been on a salary and not a fee basis. We are advised that Ray County is a county of the third class. The basic compensation for clerks of counties of the third class is presently provided on a salary basis by the provisions of Section 51.300, RSMo Supp. 1965.

This office has previously ruled that subsequent to the changing

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of the basis of compensation of clerks from a fee to a salary, that county clerks were not authorized to retain as compensation statutory fees, unless the statute expressly authorized such retention in addition to the base salary. In Opinion No. 41, issued November 4, 1953, to the Honorable Haskell Holman (copy enclosed) this office ruled:

"In view of the salary basis of compensation, . . . the legal presumption of legislative intent is that every fee is to be accounted for and not to be retained by the clerk unless the Legislature clearly states otherwise."

Since the fee in former Section 165.087, was chargeable to the county, in light of the abolishment of the fee method of compensation, this statute had no force and effect.

Section 51.390, RSMo 1959, provides:

"The clerk of the county court, in counties of the third and fourth classes, shall charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county."

Section 165.087, was repealed by necessary implication by the enactment of the statutes which placed the compensation of county clerks on a salary basis. These facts probably motivated the formal repeal of this Section by the recodification of the school laws by Senate Bill 3.

You do not indicate for how many years in the past the county clerk has filed to claim the compensation under former Section 165.087. However, we assume that all these years are subsequent to those statutes which place the county clerks of third class counties on a salary basis. Therefore, we are of the opinion that your county clerk is not entitled to any past compensation under this Section.

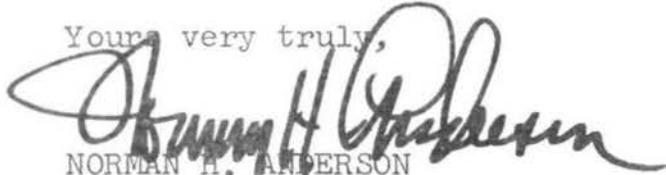
#### CONCLUSION

Therefore, it is the opinion of this office that Section 165.087, RSMo 1959, was repealed by implication by the statutes placing the office of county clerk on a salary basis and that this Section was formally repealed by Senate Bill 3, of the 72nd General Assembly, Laws 1963, p.200. Therefore, a county clerk of a third class county is not entitled to claim compensation under Section 165.087, RSMo 1959, for services rendered subsequent to the placing of that office on a salary, as opposed to a fee, basis.

Honorable Charles H. Sloan

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Louis C. DeFeo, Jr.

Yours very truly,

A large, stylized handwritten signature in black ink, appearing to read "Norman H. Anderson".

NORMAN H. ANDERSON  
Attorney General

Enclosure:

Opinion 41, Holman, 11-4-53