

COUNTY CLERKS: The County Clerk of a third
DEPUTY COUNTY CLERKS: class county may employ as
FEES, COMPENSATION AND SALARIES: many deputies as he determines
to be necessary. Paragraph 3
of Section 51.450 RSMo Supp.

1967 does not allow \$1000.00 for each deputy employed by the county clerk but does allow one flat sum of \$1,000.00 regardless of the number of deputies. Paragraph 2 of Section 51.450 RSMo Supp. 1967 permits the county court to allow an additional sum not to exceed \$1,000.00 for deputies and assistants hire. Such additional sum is not allowed for each individual deputy. County Clerks cannot be paid extra remuneration for performance of their official duties relating to casting up the votes given to candidates at elections.

OPINION NO. 79

February 27, 1969



Honorable Thomas O. Pickett
Prosecuting Attorney
Grundy County
924 Main Street
Trenton, Missouri

Dear Mr. Pickett:

This is in answer to your letter of recent date requesting an official opinion, reading as follows:

- "(a) How many deputies may the County Clerk of a county of the Third Class with a population of more than 7,500 and less than 15,000 employ?
- "(b) Are the amounts set forth by Section 51.450-1-(2), Section 51.450-3 and the additional compensation set forth in Section 51.450-2 the total amounts which may be spent by the county clerk in employment of his deputies, or do these Sections, particularly the first two, apply for each deputy employed?
- "(c) Is the county clerk and/or his deputies authorized to receive additional compensation for canvassing and counting absentee ballots and inspecting the poll books?"

Section 51.450, RSMo Supp. 1967 provides in part as follows:

"Deputies-compensation (class three counties). —
1. The clerk of the county court in each county of the third class is entitled to employ deputies

and assistants, and for the deputies and assistants,
is allowed the following sum:

* * * * *

"(2) In counties with a population of seven thousand, the sum of sixty-five per cent of the salary of the county clerk;"

The statute we feel is specific and clear in that it vests in the clerk of the county court the right to hire deputies and assistants. The legislature made no mention as to the number of such deputies or assistants. We believe that the number of employees is discretionary with the county clerk. In other words in a class three county the sum of sixty-five per cent of the county clerk's salary has been made available for the employment of deputies and assistants in any number needed under subsection 2 of paragraph 1 of Section 51.450. The clerk has discretion to hire as many such deputies and assistants as he wishes.

The statute obviously does not contemplate the allowance of sixty-five per cent of the clerk's salary for each and every deputy or assistant the clerk may see fit to employ.

Paragraph 2 of Section 51.450, RSMo Supp 1967 provides:

"The county court in all counties of the third class may allow the county clerk, in addition to the amount herein specified for deputies' or assistants' hire, a further sum not to exceed one thousand dollars per annum, to be used solely for clerical hire or allowed and paid, in whole or in part, as additional compensation to any regular deputy or assistant to be determined by the county court of the county; but the county court shall determine that the work required to be done by the clerks demands or requires the extra remuneration."

It is clear that the legislative intent in paragraph 2 of Section 51.450 is that the determination whether an additional sum not in excess of one thousand dollars for deputies' or assistants' hire shall be allowed is entirely in the discretion of the county court and that such sum is the maximum amount that may be allowed for all deputies and assistants under such paragraph.

Paragraph 3 of Section 51.450 RSMo Supp. 1967 is as follows:

"In addition to salaries fixed by this section the deputy county clerk shall receive one thousand dollars a year payable out of the county treasury."

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In tracing the history of Section 51.450 RSMo we find that paragraph 3 first appeared in 1959, L. 1959, S.B. 63.

At the time such paragraph was enacted the county clerk was authorized to employ as many deputies and assistants as he wished but the deputies and assistants could not be paid a total amount in excess of that authorized by what are now paragraphs 1 and 2 of Section 51.450.

We believe it to be clear that the reference to the deputy county clerk in paragraph 3 shows that the legislative intent is that the sum of one thousand dollars is to be paid to one deputy clerk if there is only one deputy or such sum may be divided among several deputy clerks if there be more than one deputy. There is no provision in such paragraph for an additional payment of one thousand dollars annually to each deputy clerk but the paragraph contemplates a payment of one thousand dollars additional annually for hire of a deputy or deputies. If each deputy were entitled to payment of one thousand dollars annually in addition to the salary set for each deputy by the county clerk under paragraph 1 of Section 51.450 the county clerk could require the payment of great sums of money for deputy hire by appointing scores of deputies since he can appoint such number of deputies as he sees fit. Section 51.450 which in other paragraphs limits the amounts that are to be paid for deputy hire clearly provides in paragraph 3 payment of one thousand dollars for all deputy county clerks.

You have asked whether the county clerk is entitled to receive additional compensation for canvassing and casting absentee ballots and inspecting the poll books.

We know of no requirement that the clerk or his deputies count absentee ballots. Section 112.060 RSMo provides that the clerk shall appoint not less than four disinterested persons from lists furnished by the two dominant political parties who count absentee ballots. We assume you are inquiring concerning the clerk's duties as set out in such section.

We also assume your question as to inspecting the poll books concerns the clerk's duties under Section 111.710, RSMo providing that the county clerk shall with one assistant from each of the political parties casting the highest number of votes at the last preceding general election examine and cast up the votes within five days after each election.

We find no statutory provision for any payment to be made to the county clerk for the performance of his duties relating to canvassing the ballots.

The general rule is that an officer is not entitled to compensation unless compensation is authorized by statute. This rule was enunciated in the case of King v. Riverland Levee District 279 SW 195. In that case the St. Louis Court of Appeals said l. c. 196.

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"***Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same.***"

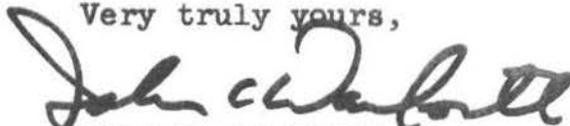
CONCLUSION

It is the opinion of this office that:

1. The County Clerk of a third class county may employ as many deputies as he determines to be necessary.
2. Paragraph 3 of Section 51.450, RSMo Supp. 1967 does not allow \$1,000.00 for each deputy employed by the county clerk but does allow one flat sum of \$1,000.00 regardless of the number of deputies.
3. Paragraph 2 of Section 51.450, RSMo Supp. 1967 permits the county court to allow an additional sum not to exceed \$1,000.00 for deputies and assistants hire. Such allowance is discretionary with the county court. Such additional sum is not allowed for each individual deputy.
4. County Clerks cannot be paid extra remuneration for performance of their official duties relating to casting up the votes given to candidates at elections.

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

Very truly yours,


JOHN C. DANFORTH
Attorney General