

COMPENSATION:
MAGISTRATES:
MAGISTRATE CLERK:
CLERKS:

A duly appointed magistrate clerk continues to hold office in the interim following the death of the appointing magistrate and until the appointment of a clerk by a magistrate appointed by the governor to fill the vacancy and that the clerk is entitled to compensation for such period.

OPINION NO. 127

August 21, 1969

Honorable William G. Johnson
Prosecuting Attorney
Morgan County Court House
Versailles, Missouri 65084

Dear Mr. Johnson:

This is in response to your request for an opinion from this office as to ". . . whether or not the Clerk of the Magistrate Court in a third class county who serves at the will of the appointing Judge is an employee of the state and/or county who is entitled to draw compensation for an interim period between the death of the Judge appointing and the appointment of a subsequent Judge who re-appointed the same Clerk. . . ."

The clerk of a magistrate court is appointed under the authority of Section 483.485, RSMo, which provides that:

"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. . . . All such clerks, . . . shall serve at the pleasure of the magistrate. . . ."

A magistrate clerk would also fall under the purview of Section 105.010, RSMo, which states that:

"All officers elected or appointed by the authority of the laws of this state shall hold their office until their successors are elected or appointed, commissioned and qualified."

Our view of the situation described in your request is that the magistrate clerk, by virtue of an appointment by order of the court, is not an employee or agent of the judge. Rather, the clerk

Honorable William G. Johnson

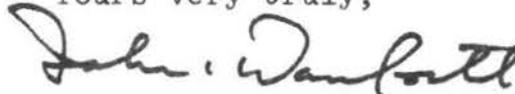
is an officer whose selection is made the responsibility and duty of a judge instead of the prerogative of the electorate. Because the record of a court and orders entered thereon are unaffected by the death of the judge of the court, the clerk's authority and tenure would therefore survive the demise of the appointing magistrate. It is our opinion that in the event a magistrate dies after duly entering on the record an appointment of a clerk, such clerk continues in office until removed by the appointing magistrate's successor, or by appropriate legal proceedings, the appointee resigns, a successor is named, or the legislature abolishes the office.

Since the magistrate clerk continues to hold office during the interim between the death of the appointing judge and the appointment of a new magistrate by the governor; we must further conclude that the clerk is entitled to compensation during the period, such compensation being an incident of the office itself. *Coleman v. Kansas City*, 173 S.W.2d 572; *State ex rel. Nicolai v. Nolte*, 180 S.W.2d 740.

CONCLUSION

It is the opinion of this office that a duly appointed magistrate clerk continues to hold office in the interim following the death of the appointing magistrate and until the appointment of a clerk by a magistrate appointed by the governor to fill the vacancy and that the clerk is entitled to compensation for such period.

Yours very truly,



JOHN C. DANFORTH
Attorney General