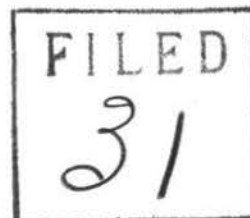


CIRCUIT CLERK: Recorders of Deeds - Deputies for circuit clerks, who are ex officio recorders of deeds should be approved by judge or judges of the circuit court.

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December 29, 1942



Honorable Robert H. Frost  
Prosecuting Attorney  
Clinton County  
Plattsburg, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of December 22, 1942, which reads as follows:

"In our county the circuit clerk is also ex-officio recorder of deeds and as such recorder of deeds is entitled to a deputy recorder. Who has the authority to approve or disapprove of this deputy. Does the Circuit Judge have the authority to disapprove a deputy recorder or is the question of approval with the county court."

According to the last Federal decennial census, the population of Clinton County is 13261.

Section 13149, Laws of Missouri, 1941, page 525, reads as follows:

"The clerks of the circuit courts shall be ex officio recorders in their respective counties, except in counties containing 19,000 inhabitants or more."

This section is a re-enactment of Section 13149 R. S. Missouri, 1939, in that it reduced the population therein set out from 20,000 to 19,000. It also specifically states, "ex officio recorders."

The term "ex officio" denotes by virtue of the office. (King v. Physicians' Casualty Ass'n of America, 150 N. W. 1010, 1011, 97 Neb. 637.)

"Ex officio" means "from office; by virtue of office; officially. A term applied to an authority derived from official character merely, not expressly conferred upon the individual, but rather annexed to the official position; also used of an act done in an official character, or a consequence of office, and without any other appointment or authority than that conferred by the office." (Lobrano v. Police Jury of Parish of Plaquemines, 90 So. 423, 424, 150 La. 14.)

Also, following the reasoning in the last two preceding cited cases the Supreme Court of this State, in defining, "ex officio", in the case of The State ex rel. McGrath v. Walker, 97 Mo. 162, l. c. 163, said:

"Section 18, of article 10, of the same instrument provides: 'Sec. 18. There shall be a state board of equalization, consisting of the governor, state auditor, state treasurer, secretary of state and attorney general. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the state, and it shall perform such other duties as are or may be prescribed by law.'

"It will thus be seen from the provisions of the constitution just noted, that the state officers mentioned in section 24, supra, are not ex-officio members of the state board of equalization, that is, their membership of that board is not the result of their holding certain state offices; but is the result of their appointment to such board, by an independent and distinct provision of the constitution. 1 Burrill Law Dict., title ex-officio. But for such independent provision they would not have been members of such board." (Underlining ours.)

Also, Vol. 25 C. J., page 169, defines, "ex officio", as follows:

"By virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office."

Since the circuit clerk, by virtue of his office, in counties having a population of less than 19,000, is the ex officio recorder of deeds, then we must examine the law in reference to the appointments of deputy circuit clerks, and not deputy recorders of deeds.

Under Section 11812 R. S. Missouri, 1929, the appointments of deputy clerks, as to number, compensation and other qualifications, were approved by the judge or judges of the circuit court. But in the re-enactment of the same section by the legislature (Section 11812, Laws of Missouri, 1933), such approval

was taken away from the judge, or judges of the circuit court, and was placed under the county court.

The St. Louis Court of Appeals, in construing an enactment of Section 11812, Laws of Missouri, 1933, which placed the approval under the county court, in the case of State ex rel. Hill v. Thatcher, 94 S. W. (2d) 1053, par. 2, said:

" \* \* \* In our view the estimate for the salary of any assistant clerk of the circuit court falls in the same category, since it is specifically provided under section 11812, Laws of Mo. 1933, that every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such officer, with the approval of the county court, and that the county court in its order permitting the clerk to appoint such deputies and assistants 'shall fix the compensation of such deputy or assistant \* \* \* and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it.' Certainly, in light of this specific statute, where the county court shall have, in conformity therewith, approved of an appointment of a deputy or assistant of a circuit clerk and has fixed the compensation of such deputy or assistant, the estimate of expenditures submitted by the circuit court and the clerk of the circuit court to the budget officer

under the Budget Law must designate therein that amount so fixed by the county court.

"In this connection we call attention to the fact that when the Legislature in 1933 repealed the then existing section 11812, Rev. St. of Mo. 1929 (Mo. St. Ann. Sec. 11812, p. 7031), and enacted a new section of the statute under the same number, a comparison of the new with the old section will disclose that the only change accomplished was to take the approval of the selection of deputies and assistants of the clerk of the circuit court and the fixing of the compensation of such deputies and assistant clerks from the circuit court and place it in the hands of the county court."

The opinion in this case was rendered June 2, 1936.

By reason of the holding in the above case, the legislature re-enacted Section 11812, as set out in Laws of Missouri, 1933, so as to place the approval of the deputies in the office of the circuit clerk under the judge or judges of the circuit court. The enactment of this section clearly shows it was the intention of the legislature that the approval should be given by the judge or judges of the circuit court, under whom the deputy clerks were employed and not for the approval to be given by the county court, under whom the deputy clerks were not employed.

Section 11812, re-enacted in Laws of Missouri, 1933, page 369, and re-enacted in Laws of Missouri, 1937, page 444, is now Section 13434 R. S. Missouri, 1939, and reads as follows:

"Every clerk of a circuit court shall be entitled to such number of deputies and assistants to be appointed by such official, with the approval of the judge or judges of the circuit courts, as such judge or judges shall deem necessary for the prompt and proper discharge of the duties of his office. The judge or judges of the circuit court, in its order permitting the clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which said order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the circuit court may, at any time, modify or rescind its order permitting an appointment to be made."

The above section clearly states that the number of deputies, the compensation and period of time for which the deputies are to be employed, must be with the approval of the judge or judges of the circuit court.

Honorable Robert H. Frost    -7-    December 29, 1942

CONCLUSION

It is, therefore the opinion of this office that, in counties having a population of less than 19,000, such as Clinton County, where the circuit clerk is also ex officio recorder of deeds, his deputies must be approved, or disapproved, by the judge of the circuit court, and not by the county court, for the reason that the deputies are not deputy recorders of deeds, but are deputy circuit clerks, acting as deputy recorders of deeds.

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK  
Attorney General of Missouri

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