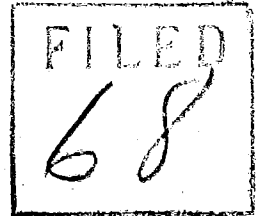


RECORDER OF DEEDS: No provision is made under the laws for payment
of deputy recorder of deeds in counties where
DEPUTIES: the circuit clerk is ex officio recorder of deeds.

February 6, 1947



2
J. Smith

Honorable Don W. Owensby
Prosecuting Attorney
Dallas County
Buffalo, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit the following statement of facts and question:

"House Bill #774 of the 63rd General Assembly relating to the office of Circuit Clerk and Recorder in counties of the fourth class provides in Section 6 thereof for the appointment of deputy recorders by the elected recorder to be approved by the county court. Said bill however makes no provision for the payment of a salary to a deputy recorder except in the general terms of section 7 of said bill.

"QUERY: Is the county court in a county of the fourth class authorized to pay out of class four funds a salary to a deputy county recorder appointed under the provisions of Bill #774 and in an amount set by the county court?"

Section 5 of House Bill No. 774 of the 63rd General Assembly, approved on April 10, 1946, seems to be the provision of the law covering the subject of deputies in the office of circuit clerk and recorder in counties of the fourth class. This section reads as follows:

"The circuit clerk and recorder in counties of the fourth class shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of the duties of his office. The judge of the circuit court, in his order permitting the circuit clerk and recorder to appoint deputies or

assistants, shall fix the compensation of such deputies or assistants which order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered on record, and a certified copy thereof shall be filed in the office of the county clerk. The circuit clerk and recorder 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."

Section 6 of the same Act contains the following provisions, relative to deputy recorders in such counties. It reads as follows:

"The circuit clerk and recorder in counties of the fourth class, as recorder of the county, may appoint in writing one or more deputies, to be approved by the county court, which appointment with the like oath of office as their principals, to be taken by them and indorsed thereon shall be filed in the office of the county clerk. Such deputy recorders shall possess the qualifications of clerks of courts of record, and may, in the name of their principals, perform the duties of recorders of deeds, but all circuit clerk and recorders and their sureties shall be responsible for the official conduct of their deputies."

It will be noted from Section 5 of this Act that the judge of the circuit court fixes the compensation of deputies or assistants to the circuit clerk and recorder. Section 6, while it does make provision for the appointment of deputy recorders, subject to the approval of the county court, it makes no provision for the compensation of such deputies. Since the lawmakers have made no provision for compensation to deputy recorders in such counties, applying the principles applied in the Hodaway County v. Kidder case, 344 Mo. 795, 129 S.W. (2d) 857, the county court would not be authorized to appropriate and pay compensation to such deputies. At l.c. 860, the court restated the rule in the following language:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation 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 same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 23, 149 S.W. 633; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

The question here is not similar to the one presented in the case of Rinehart v. Howell County, 153 S.W. (2d) 381, because this is a question of compensation to a public officer, and in the Rinehart case, the question before the court was one of reimbursement to an officer for necessary expenditures.

CONCLUSION

From the foregoing, it is the opinion of this department that a county court in a county of the fourth class would not be authorized to pay out of class four funds a salary to a deputy county recorder in counties in which the office of circuit clerk and recorder are combined. It is further the opinion of this department that only deputies and assistants to the circuit clerk and recorder may be paid the salary which is fixed by the judge of the circuit court under authority of Section 5 of said House Bill No. 774.

Respectfully submitted,

APPROVED:

J. E. TAYLOR
Attorney General

TYRE W. BURTON
Assistant Attorney General

TWB:VLM