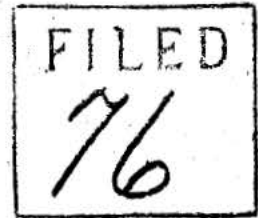


COUNTY COURT: County court may allow up to \$500.00 per
annum to county clerk for payment of addi-
COUNTY CLERK: tional compensation to deputies and
assistants.



Mr. Allen Rolston
Prosecuting Attorney
Lancaster, Missouri

Dear Sir:

This department is in receipt of your request for
an official opinion which reads as follows:

"The county court of Schuyler county has called
on me as prosecuting attorney for information
that I am not sure that I can give correctly.
My conclusion is not in harmony with an opinion
written by an assistant to General McKittrick.
The question is this:

"This, Schuyler, county is a county of fourth
class. House bill No. 768 (I believe I have
the number correctly) is a substitute for Sec.
13433, as amended by Laws of 1943, page 874,
making that statute applicable to counties of
this class.

"This statute and bill provides that in counties
of this class a fixed salary of \$600.00 per year,
and then provides a further sum of \$500.00 per
year may be paid for necessary additional clerical
hire, and further provides that such sum can only
be used for clerical hire, and further provides
that the county court, before allowing such addi-
tional salary, shall determine that the work to
be done by such clerk or clerks demands or requires
such extra remuneration.

"It will be difficult, if not impossible, for
this county to get a competent deputy for the
salary of \$600.00 per year, and it is very neces-
sary that this county have a deputy county clerk.

"A somewhat similar question was submitted to your
predecessor, General McKittrick, and was answered
by Mr. B. Richards Creech on Dec. 27, 1943, and

the opinion referred to says that it is the opinion of the department, briefly stated that the statute (Laws of 1943) requires that this extra salary can only be paid to some one who is not already a deputy clerk. I am informed that our state auditor has in some way notified our county clerk that he, the auditor, will follow the opinion written by Mr. Creech.

"As it is immediately imperative that our county have a full time deputy clerk, and at my suggestion, our county court has made an order finding that such clerical work requires additional compensation, approving the appointment of a deputy, and fixing her salary at \$87.50 per month until and unless there be a contrary adjudication, or unless and until your department rules to the contrary.

"The principal basis for my opinion is derived from the wording of this House Bill 768, where, close to the last paragraph it reads: 'Provided further, that the county court shall determine that the work required to be done by such clerk or clerks demands or requires such extra remuneration'. The basis of the opinion written by Mr. Creech, as I understand him, is that the statute requires extra help, while the law says that the court must find that the work to be done requires such extra remuneration.

"Since our clerk seems to be unable to get a competent deputy for \$600.00 per year, and without extra compensation, it seems clear to me that our court is fully justified in making its finding that such extra remuneration is necessary. The only question in my mind, that is to my own satisfaction, is whether or not some one in addition to the regular clerk must be employed, or whether the regular deputy can draw this pay for such extra service."

House Committee Substitute for House Bill #768 enacted by the 63rd General Assembly and approved by the Governor provides for the compensation for the clerk of the County Court in counties of the fourth class. The act further provides for the employment of deputies and clerks in said office and fixes their compensation, which authority is set forth in Section 5 as follows:

"The clerk of the county court in counties of the fourth class shall be entitled to employ deputies and assistants and, for such deputies and assistants, shall receive the following sums: In counties having a population of less than 7,500 the sum of \$600; * * * * * provided that the county court in all counties of the fourth class may allow the county clerk, in addition to the amount herein specified for deputies or assistants hire, a further sum not to exceed \$500 per annum to be used solely for clerical hire to be determined by the county court of such county; and provided further that the county court shall determine that the work required to be done by such clerk or clerks demands or requires such extra remuneration."
 (Underscoring ours)

Schuyler County according to the last decennial census has a population of 6,627 and therefore falls within the class mentioned in the statute above.

An opinion of this department rendered by a previous Attorney General to Honorable Charles A. Prather, Memphis, Missouri, held under a law enacted by the 1943 General Assembly, which law was for the purpose of this opinion identical with House Bill #768, as follows:

"1) It is the opinion of this department that if a County Court in exercising their discretion allowed a County Clerk an additional sum of money, not to exceed the sum of \$500 per annum, to be used solely for clerical hire as is provided in section 13433 Laws of Missouri 1943, page 874, that such clerical help must be different individuals than his deputies or assistants, and must not have any official power or authority as deputies or assistants to the county clerk for the reason that the compensation of the deputies and assistants is otherwise provided for in said section."

In reconsidering the above opinion we reach the conclusion that it does not correctly state the law relating thereto for reasons hereinafter set forth.

Senate Bill #483 enacted by the 63rd General Assembly sets forth the duties of the clerk of the County Court and Section 10 of said bill provides in part as follows:

"Every clerk of a county court shall keep an accurate record of the orders, rules, and proceedings of the county court, and shall make a complete alphabetical index thereto; issue and attest all process, when required by law, and affix the seal of his office thereto; keep an accurate account of all moneys coming into his hands on account of fees, costs or otherwise, and punctually pay over the same to the persons entitled thereto: * * * * *

It will be seen that under the above statute that the clerk of the County Court has certain clerical duties to perform.

Under House Bill #768, supra, the county clerk is entitled to employ deputies and assistants and may be allowed an additional amount by the County Court to be used solely for clerical hire, if the County Court determines that the work to be done by such clerk or clerks demands or requires such "extra remuneration."

In Ballentine's Law, page 364, we find the term deputy defined as follows:

"deputy -- A person subordinate to a public officer whose business and object is to perform the duties of the principal.

One who occupies in the right of another, and for whom his superior shall answer."

The word "assistant" on page 117 reads as follows:

"The word is universally defined as one who aids, helps or assists. In the absence of any statutory provision, the assistant never acts officially for the principal. He is not required to be sworn nor to give bond. His capacity is more clerical than otherwise. The word is far from being synonymous with 'deputy' which is the designation of a person who is appointed to act for another, a substitute, a delegate, an agent."

In view of the above two definitions, a deputy and an assistant in the office of the clerk of the County Court aids and assists the clerk in carrying out his duties which includes clerical work.

The word "clerk" has been defined in Appeal of Walker, 294 Pa. 385, 144 A. 288 as "one engaged in a form of

Mr. Allen Rolston

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clerical work like bookkeeping, copy, transcribing, letter writing, tabulating, etc." A like definition is given in 14 C.J.S., page 1205 and Amyot v. Caron, 88 N.H. 394, 190 A. 134.

Therefore, the deputies and assistants provided for in House Bill #768 for whom a definite salary is provided are also clerks and if the County Court determines that the work required of such clerks demands "extra" remuneration then it may grant such extra compensation. The word extra has been defined as expressing "an idea of something beyond, in addition to, or in excess of what is due." Fullerton v. City of Des Moines, 115 N. W. 607.

When the General Assembly provided that "extra" remuneration be paid, it obviously meant compensation that was to be paid in addition to some other pay or salary already provided for, that is the \$600.00 allowed the deputies and assistants.

Therefore, we believe that the \$500.00 extra remuneration allowed in the act may be paid to augment and increase the pay of the deputies or assistants in the office of the clerk of the County Court.

CONCLUSION

It is, therefore, the opinion of this department that under the provisions of the H.C.S. for House Bill #768, enacted by the 63rd General Assembly, the clerk of the County Court in Counties having a population less than 7,500 shall receive the sum of \$600.00 for the payment of the salaries of deputies and assistants. Further, if the County Court shall determine that the work required to be done demands extra remuneration, then the County Court may allow a further sum not to exceed \$500.00 per annum to pay extra remuneration to such deputies and assistants.

The opinion of this department rendered to the Honorable Charles A. Prather of Memphis, Missouri, on December 27, 1943, in so far as it holds to the contrary is overruled.

Yours very truly

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED

J. E. TAYLOR
Attorney General