

CLERK OF THE HANNIBAL COURT OF  
COMMON PLEAS:

- Compensation to be received after  
the first Monday in January, 1935.

2-2

January 31, 1935.



Hon. Walter G. Stillwell  
Prosecuting Attorney  
Marion County  
Hannibal, Missouri

Dear Sir:

This is to acknowledge receipt of your letter dated January 8, 1935, requesting an opinion, which reads as follows:

"The opinion of this office has been requested by the County Court of Marion County, as to the status of the Clerk of the Hannibal Court of Common Pleas relative to salary. It is contended that under the terms of sections 11786, 11808, 11811, 11812 and 11814, of the Laws of Missouri, 1933, found on page 369 repealing the so-called salary sections pertaining to Circuit Clerks that this office is on a fee basis. In this behalf your attention is called to the fact that the Hannibal Court of Common Pleas has territorial jurisdiction of only two townships in Marion County, the population of which is approximately twenty-five thousand.

"Section 14540 R. S. Mo. 1929 and following sections that deal with the creation and existence of the Hannibal Court of Common Pleas has a salary statute, to-wit, 14563, and it is my opinion that because this section has never by implication been repealed, that it is applicable to our local situation and that the salary of our Clerk should be governed thereby. The opinion of your office would be greatly appreciated on this question."

Prior to the first Monday of January, 1935, the Clerk of the Circuit Court received a salary under the provisions of Sections 11786 and 11813, R. S. Mo. 1929. After the first Monday of January, 1935, the Circuit Clerk will receive as compensation for his services fees not to exceed the amount specified in Section 11786, Laws of Missouri, 1933, page 369. Said section provides:

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. In counties having a population of less than 7,500 persons, the sum of \$1000.00; in counties having a population of 7,500 and less than 10,000 persons, the sum of \$1100.00; in counties having a population of 10,000 and less than 12,500 persons, the sum of \$1300.00; in counties having a population of 12,500 and less than 15,000 persons, the sum of \$1500.00; in counties having a population of 15,000 and less than 17,500 persons, the sum of \$1700.00; in counties having a population of 17,500 and less than 20,000 persons, the sum of \$1900.00; in counties having a population of 20,000 and less than 25,000 persons, the sum of \$2100.00; in counties having a population of 25,000 and less than 30,000 persons, the sum of \$2300.00; in counties having a population of 30,000 and less than 70,000 persons, the sum of \$2500.00; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3000.00; provided, that in any county wherein the clerk of the Circuit Court is ex-officio recorder of deeds, said offices shall be considered as one for the purpose of this section; provided, further, that clerks of the Circuit Court shall be allowed to retain, in addition to the fees allowed under this section, all fees

earned by them in cases of change of venue from other counties; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

Section 14563, R. S. Mo. 1929, which applies to the Clerk of the Hannibal Court of Common Pleas reads as follows:

"The clerks of the circuit courts of this state shall receive for their services, annually, the following sums: In counties having a population of 7,000 persons and less than 10,000 persons, the sum of eleven hundred dollars; in counties having a population of 10,000 persons and less than 15,000 persons, the sum of twelve hundred and fifty dollars; in counties having a population of 15,000 persons and less than 20,000 persons, the sum of sixteen hundred dollars; in counties having a population of 20,000 persons and less than 25,000 persons, the sum of nineteen hundred and fifty dollars; in counties having a population of 25,000 persons and less than 30,000 persons, the sum of two thousand dollars; in counties having a population of 30,000 persons and less than 40,000 persons, the sum of two thousand dollars; in counties having a population of 40,000 persons and less than 100,000 persons, the sum of twenty-five hundred dollars; in counties having a population of 100,000 persons and less than 300,000 persons, the sum of three thousand dollars. In counties having a population of less than 7,000 persons the clerk shall receive no salary, but shall be allowed to retain all fees earned by him, out of which he shall pay his deputies and assistants: Provided, that the provisions of this law shall not apply to any county wherein the clerk of the circuit court is ex-officio recorder of deeds of said county; and provided further, the provisions of this law shall not apply

to any county which now contains or may hereafter contain a city of 75,000 inhabitants or more, or to any county which now contains or may hereafter contain 80,000 inhabitants and less than 150,000 inhabitants, in which circuit court is held in two or more places in said county. For the purposes of this law the population of any county shall be determined by multiplying by five the total number of votes cast in such county at the last presidential election prior to the time of such determination: Provided, that the provisions of this law shall also apply to clerks of courts of common pleas in all counties in this state which now or may hereafter have a population of not less than 30,000 people and not more than 40,000 people, and which said courts of common pleas now have and exercise or may hereafter have and exercise within well defined territorial limits within their respective counties the same exclusive original jurisdiction in both civil and criminal actions as is now had and exercised by circuit courts of this state, and such clerks of courts of common pleas shall receive for their services, annually, the sum of two thousand dollars (\$2,000)."

Unless Section 11786, Laws of Mo. 1933, has repealed Section 14563, supra, by implication, said section would still govern compensation of the Clerk of Hannibal Court of Common Pleas. It will be noted that Section 11786, supra, refers to "any clerk of the Circuit Court" but does not specifically mention Clerk of the Court of Common Pleas.

We call your attention to Section 656, R. S. Mo. 1929, which reads as follows:

"Whenever the term 'circuit court'

is used in any law general to the whole state, the same shall be construed to include 'courts of common pleas,' unless such construction would be inconsistent with the evident intent of such law, or of some law specially applicable to courts of common pleas."

In the case of Koehler v. Snider, 177 Mo., l.c. 556, the Court, in construing this section, said:

"Counsel for defendants refer us to section 4161, Revised Statutes 1899, which provides that 'whenever the term "circuit court" is used in any law general to the whole State, the same shall be construed to include "courts of common pleas," unless such construction would be inconsistent with the evident intent of such law or of some law specially applicable to courts of common pleas.' And inasmuch as section 3627, Revised Statutes 1899, provides that 'injunctions may be granted by the circuit court or judge thereof in vacation,' if we read into said section, 'common pleas court' instead of 'circuit court' the judge of said common pleas court would by express statute be given the power in vacation to issue writs of injunction. But by recurring to section 4161, Revised Statutes, 1899, it will be observed that the words 'common pleas' is not to be read into the statute if by so doing such a construction would be inconsistent with 'some law specially applicable to courts of common pleas.' As we are considering a statute 'specially applicable' to the Cape Girardeau Court of Common Pleas, and as that statute expressly provides that 'writs of injunction issued by the judge of said court shall be returnable to the circuit court,' it is quite obvious that section 4161 in no way enlarges the powers of the judge of the Cape Girardeau Court of Common Pleas, but is inconsistent with the special act creating that court."

In the recent case of State ex rel. Aquamsi Land Co., v. First National Bank of Cape Girardeau, (Sup. Ct.) No. 33,775, (not yet officially reported) the Court said:

"Repeals by implication are not favored (Cooley's "Constitutional Limitations" (8th ed.) p. 316; Black on "Interpretation of Laws" (2d ed.) Sec. 107, page 351; 12 C. J., p. 710, n. 54; Endlich on "Interpretation of Statutes", Sec. 210, p. 280.) At page 281 in the authority last cited it is said: 'A rule founded in reason as well as in abundant authority, that, in order to give an act not covering the entire ground of an earlier one, nor clearly intended as a substitute for it the effect of repealing it, the implication of an intention to repeal must necessarily flow from the language used, disclosing a repugnancy between its provisions and those of the earlier law, so positive as to be irreconcilable by any fair, strict or liberal construction of it, which would, without destroying its evident intent and meaning, find for it a reasonable field of operation, preserving, at the time, the force of the earlier law, and construing both together in harmony with the whole course of legislation upon the subject."

In conclusion, it is our opinion that the following provision of Section 14563, supra, namely "\*\*\*\* the provisions of this law shall also apply to clerks of courts of common pleas in all counties \*\*\* which now or may hereafter have a population of not less than, 30,000 people and not more than 40,000 people, and which said courts of common pleas now have and exercise or may hereafter have and exercise \*\*\* exclusive original jurisdiction in both civil and criminal actions \*\*\* and such clerks of courts of common pleas shall receive for their services annually, the sum of two thousand dollars (\$2000.),"

Hon. W. G. Stillwell

-7-

1/31/35

has not been repealed by implication and such governs as to the compensation of the Clerk of the Hannibal Court of Common Pleas.

Marion County has a population of 33,493 inhabitants according to the United States decennial census for 1930. The Hannibal Court of Common Pleas exercises original jurisdiction in both civil and criminal actions.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General

JET/JLH:afj