

COUNTY CLERK DEPUTIES: Entitled to increase authorized by  
Section 11811 Laws of Missouri 1933,  
page. 371

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May 17, 1934.



Hon. Wm. Womack  
County Clerk  
Madison County  
Fredericktown, Mo.

Dear Mr. Womack:

Acknowledgment is herewith made of your request for  
an opinion of this office on the following matter:

"In our County according to population my salary  
is \$1250.00 per year and my deputy \$600.00 (Sec-  
tion 11811 of the last General Assembly fixes my  
salary at \$1100.00 and my deputy at \$900.00 a  
year.) However, a provision is made that I shall  
be paid the same rate until the expiration of my  
term of office, and further provides that this  
act shall not apply to Counties paying a fixed  
salary. We are on a salary basis. Must my  
deputy continue to work for \$600.00 or is he en-  
titled to \$900.00? If not can we according to  
Law change to the new rate which will reduce my  
pay \$150.00 a year but will raise my deputy pay?  
I am not clear on this matter and will appreciate  
this information from you. Thanking you for  
this and past favors."

I.

COUNTY CLERK OF MADISON COUNTY  
ENTITLED TO \$1250.00 PER ANNUM  
UNTIL EXPIRATION OF PRESENT TERM.

Under the provisions of Section 11811 R. S. Mo. 1929,  
it is provided:

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"The aggregate amount of fees that any clerk under articles 2 and 3 of this chapter shall be allowed to retain for any one year's services shall not in any case exceed the amount hereinafter set out." \* \* \* "In all counties containing fifteen thousand inhabitants or less the clerks shall be permitted to retain twelve hundred and fifty dollars for themselves, and be allowed to pay for deputies or assistants not exceeding six hundred dollars:" \* \* \* "

It is under the provisions of this section that you have in the past been permitted to retain \$1250.00 per annum as compensation for your services and \$600.00 per annum for the hire of deputies. We direct your attention to the word "retain" as used in the foregoing extracts from this section. An examination of the entire section reveals that this is the term used throughout the law respecting the payment of your compensation. No provision is made for the payment of a salary from the general revenue funds of the county. You are simply permitted to retain from the fees which you earn in the conduct of your office a sum sufficient to compensate you in this amount annually. The same is true of your deputy hire. In this Section as amended by the 57th General Assembly found at page 370 Laws of Missouri 1933, we find the pertinent parts of this amended section to read:

"The aggregate amount of fees that any clerk of the County 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 7,500 and less than 10,000 persons the clerks shall be allowed to retain \$100.00 for themselves, and shall be allowed to pay for deputies and assistants \$900.00." \* \* \* "Provided, further, that until the expiration of their present term of office, the person holding the office of County Clerk shall be paid in the same manner and to the same extent as now provided by law provided that this act shall not apply to counties in which such clerks now or may hereafter receive a fixed salary in lieu of all fees, commissions and emoluments."

Under the provisions of this Section the characteristic feature of the prior section has been reenacted, to-wit, that the county clerk is allowed to "retain" fees which he has earned up to the maximum amount stated. No provision is made for the payment of a

salary from the County Treasury. It is therefore our belief that the last proviso of this Section referring to "a fixed salary" has no reference to any clerk paid under the provisions of this Section but is intended to refer to certain counties whose clerks receive their compensation from the general revenue funds of the County irrespective of the amount of the collection of fees.

It is therefore the opinion of this office that you are entitled to retain the maximum of \$1250.00 for your compensation from fees collected under the provisions of Articles 2 and 3 of Chapter 84 R. S. Mo. 1929 until the expiration of your present term of office.

## II.

### COUNTY CLERK ENTITLED TO RETAIN \$900.00 PER ANNUM FOR DEPUTY HIRE IN MADISON COUNTY MISSOURI.

The 1933 amendment to Section 11811 increased the allowance for deputy hire in your County from \$600.00 to \$900.00 per annum. This law became effective on July 24, 1933, and unless there is some constitutional objection it is apparent that it was meant to be operative upon its effective date. Whether or not this law might conflict with the constitutional provisions is determined by the question as to whether or not a deputy county clerk has a "term" within the meaning of the constitution. The authority for the appointment of deputy county clerks is found in Section 11680 R. S. Mo. 1929 which is as follows:

"Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least seventeen years of age and have all other qualifications of their principals and take the like oath, and may in the name of their principals perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies."

Nothing is stated in this Section which could in any manner be construed as fixing a term for deputy circuit clerks. Nor is any term fixed in the provisions of Section 11811. It appears

that a deputy county clerk serves at the pleasure of the appointive power. It cannot therefore be said that he has any "term of office" in a legal sense. See Throop on Public Officers, Section 303:

"The word 'term' is uniformly used to designate a fixed and definite period of time\* \* \*and an officer who holds his office at the pleasure of another officer\* \* \*has no official term, within the meaning of a constitutional or statutory provision relating to such term.' "

This has been adopted by the Courts of this State as the rule to be observed here. In the case of State ex rel. v. Gordon, 238 Mo. 168, l. c. 181, Judge Lamm stated:

"It seems to us that the cited authorities directly apply to the situation thus presented; for the sum of the matter is that any one who holds office at the pleasure of the appointing power has no 'term of office.' "

This issue was directly before the St. Louis Court of Appeals in the case of Horstman vs. Adamson, 101 Mo. A. 119. In this case the clerk of the County Court had gone so far as to enter into a contract with the deputy for a stipulated salary for the whole period that the County Clerk should remain in office. After determining that the section authorizing the appointment failed to define the period of deputyship, the Court held that regardless of the contract the clerk was empowered to reduce the compensation or discharge the deputy at any time, l. c. 124:

"\* \* \*The rule is well established that an appointment to office for a definite term confers upon the incumbent the right to serve out the full official period, unless forfeited by misconduct, for the permanence of the official tenure negatives the authority of the appointing power of removal at will. But where the law conferring the authority, under which the appointment is made, is silent as to any limitation of the right of removal, and the official term is unlimited, the absolute power of removal is an incident to the power of appointment to be invoked and applied at pleasure, without notice, and without legal liability for the results. These principals have been frequently recognized in numerous decisions, alike by the Federal courts as well as by the Courts of many States, including our own.\* \* \*"

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"This right of control over the period of deputyship, the public interests and the proper administration of the office alike prohibited the official from restricting, by any action or consideration on his own part.\* \* \* \*"

In view of the foregoing authorities it is the opinion of this office that the Clerk of the County Court of Madison County is now entitled to retain from fees collected under the provisions of Articles 2 and 3 of Chapter 84 R. S. No. 1929, the maximum of \$900.00 for deputy clerk hire.

Respectfully submitted,

  
HARRY G. WALTNER, JR.  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

HGW:MM