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CIRCUIT CLERK: Compensation of person appointed to fill out unexpired term same as salary of predecessor until the end of the term.

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11786 law 33

March 27, 1934.

FILED
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Mr. John H. Keith,
Attorney at Law,
Ironton, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of March 10 relative to the following question:

"The clerk of the circuit court and recorder of deeds for this county has resigned, and another person has been appointed in his place.

The question arises as to the salary of the one who succeeds the one resigned.

Section 11786, Laws 1933, Page 369 concludes as follows: '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.'

The question to be determined is whether or not the person appointed as successor to the one who held the office at the time of the passage of this law would come under the provision above set out, or would his salary be fixed by this statute, and not the statute before this enactment. How about the selection of deputy of the one appointed?"

As you appear to be familiar with Sec. 11786, Laws of Mo. 1933, p. 369, the same relating to the compensation of the Circuit Clerk on and after January 1, 1935, we will not quote same.

We are enclosing copy of an opinion rendered by Assistant Attorney General Reagan on March 7, 1934 relating to this matter, which we believe will contain information beneficial to you. We are also enclosing copy of an opinion rendered by the writer to the Honorable Stanley Wells, County Clerk, Warrensburg, Missouri wherein the status of the deputy Circuit Clerk is discussed. You will note in this opinion it was held that the Laws of 1933 relating to the deputy Circuit Clerk became effective on July 24, 1933.

I.

We will now discuss the main question in your letter, i.e., the compensation of the person appointed to fill the vacancy in the office of Circuit Clerk.

Sec. 11786, Laws of Mo. 1933, page 369 deals with the compensation of Circuit Clerks and except for the proviso contained at the close - "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" - we would have no hesitancy in holding the salary relating to the Circuit Clerks became effective on July 24, 1933. It is reasonable to assume that a person receiving an appointment to fill out an unexpired term occupies the same position as his predecessor, his rights, powers and compensation being neither greater nor less.

There are no decisions in Missouri direct in point on this question; however, we quote from the case of Carter v. State, 177 Okla. 31, as follows:

"Where a person is appointed to fill an unexpired or fractional term of a public office, his 'term of office' begins with his appointment and qualification, and he is entitled to receive the salary provided by law at the time of such appointment although such law is enacted subsequent to the date of the election or appointment of his predecessor."

CONCLUSION

It is the opinion of this department that the person

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appointed to fill out the unexpired term of the Circuit Clerk in your county is entitled to receive the same compensation, until the end of the term, as was received by his predecessor.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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