

CIRCUIT CLERK: Salary determined by Sec. 11786, Laws 1933, p. 369. Population of Marion County, even though it contains Court of Common Pleas, in which there is a Clerk, is determined by the entire population of the County.

RECORDER OF DEEDS: Compensation is amount of fees as set forth in Sec. 11804, R.S. Mo. 1929 and the limitation of the amount of fees he may retain is Sec. 11828, R.S. Mo. 1929.

September 17, 1936.

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

Dear Mr. Stillwell:

This department is in receipt of your letter of September 12, which is as follows:

"You no doubt recall that Thad Smith, former Clerk of the Circuit Court of this county and Ex-officio Recorder of Deeds, recently died. Soon after his death I telephoned you and expressed as my opinion that because of the separation of the two offices, as enacted by the legislature of 1933, that it would be necessary that two people be appointed; one as Clerk of the Circuit Court and the other as Recorder of Deeds. You will recall that you concurred with me in this opinion.

"Soon after our conversation, Governor Park appointed Edwin Smith as Clerk of the Circuit Court and Mrs. Frances E. Johnson as Recorder of Deeds. The question now presents itself as to the salary and fees that are to be allowed each official. It is my opinion that the compensation of the Circuit Clerk is covered by Sections found on pages 369-372, Laws of Missouri, 1933.

"I am a little confused, however, as to the compensation allowed the Recorder and can find no law for this situation except the regular Recorder's Fee statute in the 1929 Revised Statutes. You will note that that chapter segregating these two offices, which is found on pages 360-362, Laws of Missouri, 1933, makes no provision whatever for the compensation to the Recorder. I would appreciate the opinion of your office as to the salary or fees allowed

the Circuit Clerk and also the Recorder of Deeds. In this connection your attention is called to the peculiar judicial set-up of Marion County, that is, that our Circuit Court at Palmyra is a Court of unlimited jurisdiction for all townships in the county save and except Mason and Miller. The Hannibal Court of Common Pleas, which comprises Mason and Miller Townships, is to a certain extent a Court of limited jurisdiction. Therefore, should the population in computing the salary and fees of the Circuit Court be Marion County as a whole or Marion County exclusive of Mason and Miller Townships?

"I refer to the Hannibal Court of Common Pleas as being a court of limited jurisdiction, which it is in certain isolated and segregated matters such as appeal from the Workmen's Compensation Commission, appeal from Probate Court, and a few other instances, which must be taken directly to the Circuit Court of Palmyra. I am giving you this information so it can be taken into consideration when the opinion is written on these two specific questions."

I - Circuit Clerk

The compensation of the Circuit Clerk is fixed by Section 11786, Laws of Mo. 1933, p. 369. The last decennial census shows the population of Marion County to be more than 30,000 inhabitants; hence, the salary is \$2500. The deputy and assistant circuit clerks' compensation is fixed by Section 11812, Laws of Mo. 1933, p. 371. We are therefore of the opinion that you are correct, as stated in your letter, that these sections govern the salary of the Circuit Clerk.

The manner of determining the population of any county in the state is found in Section 11808, Laws of Mo. 1933, p. 370, which is as follows:

"The last previous decennial census of the United States shall be the basis for determining the population of

any county in this state, for the purpose of ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants."

The fact that Marion County contains a Court of Common Pleas, which has concurrent jurisdiction of Mason and Miller Townships, presents the question as to whether or not the Circuit Clerk is entitled to have his salary computed on the basis of the entire population of Marion County or the population exclusive of Mason and Miller Townships, the Court of Common Pleas having its own clerk who officiates in that Court.

The Legislature has not seen fit to in any wise limit the manner of determining the population of any county as it affects salary and fees of county officials; hence, we can come to no other conclusion than that the words "shall be the basis for determining the population of any county in this state" in the absence of any exception to the statute, mean that the entire population of Marion County shall be considered in arriving at the compensation of the Circuit Clerk, and we accordingly so hold.

II - Recorder of Deeds

In 1933, the Legislature repealed a number of sections relating to the office of Recorder of Deeds and reenacted seven new sections relating thereto. As stated in your letter, no compensation in the form of salary was fixed for the Recorder of Deeds. It is therefore necessary that he receive his compensation in the form of fees and the main fee section is 11804, R.S. Mo. 1929, the other sections in which the Recorder exacts fees being mentioned in the specific statutes. The only limitation on the amount of fees the Recorder may retain is Section 11828, R.S. Mo. 1929, which provides:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants, or more. After the first day of

January, 1891, every such officer shall make return quarterly to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit; and for any statement or omission in such return contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

In the absence of any statute giving to the Recorder of Deeds a salary, or in the absence of any statute stating the amount of fees he may retain for himself, as in the case of the Circuit Clerk, we are of the opinion that the section of the statutes relating to fees to be charged by the Recorder of Deeds - Sec. 11804, R.S. Mo. 1929 - governs the compensation he shall receive in Marion County, the limitation on the amount being as provided in Section 11828, supra.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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