

RECORDER OF DEEDS: Court only fixes reasonable amount for recorder
COUNTY COURT : to retain out of excess fees for deputy hire.

March 25, 1939

Hon. C.G. Vogt
Prosecuting Attorney
Nodaway County
Maryville, Missouri



Dear Sir:

This will acknowledge receipt of your letter of
March 7, 1939, which reads as follows:

"Our Recorder has had a rush of business since the 1st of Dec. 1938 recording leases. He put on extra help in December and raised his chief deputy from \$100.00 to \$150.00. Last year was the first time any surplus has come out of the recorders office to the County. The court allowed expense of the extra help but refused to allow the raise to the deputy for the reason that she was not worth more to the county than she was to the recorder and for the further reason that there are 3 other lady deputies in the court house no one of which get in excess of \$100.00 per month. I decided the court was within its right in the decision. I am now asking you at the instance of the recorder if you will give your opinion or if you have a similar instance where you can send us a copy of opinion in a case at point."

Nodaway County has a population of over 20,000, and as such, the office of recorder of deeds is a separate office. Assuming that there has been no election combining said office with that of circuit clerk (Laws of 1933, page 360, Sections 11528, 11538). It being a separate office, the statutes relating to said county are Sections 11542 and 11568, R.S. Missouri, 1929.

Section 11542 authorizes recorders of deeds to appoint deputies. With reference to these deputies' compensation, Section 11568 provides:

"The recorder of each county in which the offices of recorder of deeds and clerk of the circuit court are separate shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and all the fees received by him, over and above the sum of four thousand dollars, for each year of his official term, after paying out such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury, to form a part of the jury fund of the county."

In State ex rel. v. King, 136 Mo. 309, the court had a similar question before it. There the question was: Could the county court refuse to make an allowance out of surplus recording fees for deputy hire. The court said at l.c. 318:

"The constitution, while placing a limit upon the amount of fees ministerial officers of a county are allowed to retain, makes such amount 'exclusive of the salaries actually paid to his necessary deputies.' Section 13, article 9. The statute which was in force when the constitution was adopted limits the fees a recorder is entitled to retain to \$4,000 per year, and provides that all fees received by him over and above that amount 'for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury.'

"Under these provisions, is a recorder entitled, as a matter of right, to retain out of the fees of his office an amount sufficient to pay reasonable compensation to necessary assistants, or is the allowance left entirely to the discretion of the county court?

"The constitution is positive in its terms, and contains no words from which a discretionary power can be implied. The statute can not be given such construction as will cause a conflict with the constitution. The statute existing when the constitution was adopted would be repealed by such a construction. To give the statute effect, then the word 'may' can not be given a meaning which could deprive the recorder of his right to an allowance for assistants if they were necessary to secure the proper and expeditious performance of the duties of the office. It is also a well recognized rule of construction that the word 'may' should be interpreted to mean 'shall' when referring to a 'power given to public officers, and (which) concerns the public interest and the rights of third persons, who have a claim de jure that the power shall be exercised in this manner.' Such an interpretation is demanded 'for the sake of justice and the public good.' Steines v. Franklin Co., 48 Mo. 178, quoting from Newburgh Turnpike Co. v. Miller, 5 Johns. Chy. 113.

"There can be no doubt that the public interest demands that the work required of a recorder should be done promptly, carefully, and well. A public officer is, by right, entitled to compensation for the labor performed, and it should also be measured to some extent by the responsibilities assumed. The statute

regulates the amount of the fees the recorder is entitled to collect, and the presumption is that he fairly earns what he is allowed to charge. Four thousand dollars was fixed as the amount the recorder was capable of earning at the established charges; and, when the fees for work required to be done exceed that sum, it is a fair presumption that assistance would be necessary. If necessary, the constitution and statute clearly intend that assistants should be employed and paid.

"In construing a statute which provided that when a county officer receiving a salary is compelled, by pressure of business to employ a deputy, 'the county court may make a reasonable allowance to the deputy,' the court held that the county must pay a reasonable compensation for the necessary service rendered, and that payment was not discretionary with the county court. Bradley v. Jefferson Co., 4 G. Greene, 300. See, also, Washington Co. v. Jones, 45 Iowa 261."

This case would seem to settle the point that the county court must allow deputy hire to the recorder when the press of business of the office is such that help is needed. It also impliedly holds that the county court, in fixing the deputy hire that they 'deem necessary', may only do so in a reasonable amount.

The county court, under the above statutes, does not fix the salary of the deputy recorder, but only fixes the amount allowed to be retained by the recorder out of excess recording fees in order to compensate him for the salary he paid to his deputy. This amount could not be in excess of that actually paid the deputy. (Section 13, Article IX, Missouri Constitution).

CONCLUSION

Therefore, it is our opinion that the county court does not determine the salary to be paid a deputy recorder, but only fixes the amount the recorder may retain to compensate him for the salary he (the recorder) paid his deputy. The determination of this amount is in the discretion of the county court, subject only to the limitation that it be reasonable.

Respectfully submitted,

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APPROVED By:

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LLB:VAC