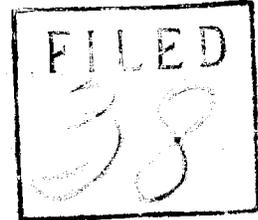


RECORDER OF DEEDS: Required to settle with county court at the end of each year.

January 4, 1940

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Honorable Frank W. Hayes
Prosecuting Attorney
Sedalia, Missouri

Dear Mr. Hayes:

This will acknowledge receipt of your inquiry of recent date, which reads as follows:

"Some question has arisen in this county as to the proper construction of Section 11,568 dealing with surplus fees collected by the Recorder of Deeds. The section provides that the recorder's annual compensation shall be limited to \$4,000.00 and requires the payment of the surplus fees into the county treasury for the benefit of the jury fund.

"In this particular instance, the recorder has collected approximately \$6,500.00 gross and after the expense of clerk hire will have approximately \$5,000.00 left, net. Of this \$5,000.00 he is entitled to \$4,000.00. The question arises whether or not he is compelled to pay this \$1,000.00 at the end of this year into the county treasury, or whether he may retain these surplus fees from year to year so that his yearly salary may be \$4,000.00.

"In other words, next year his net fees may not be enough to make his salary \$4,000.00 and in such case would he be entitled to augment his salary out of the \$1,000.00 surplus received for this

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year so as to bring his next year's salary up to the maximum of \$4,000.00. A similar proposition might arise each year of his four year term.

"To state the matter in another way, is the recorder required to settle with the county at the end of each year and turn in all surplus funds, or may he retain these surplus funds and settle with the county at the end of his four year term, so that he may be assured that his annual compensation will average \$4,000.00, which is the maximum annual salary fixed by statute.

"Will you please give me a construction of this statute at your earliest convenience so that due settlement may be made between the recorder of deeds and the county court."

Section 11568 of the statutes, to which you refer in your letter, reads as follows:

"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 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, to form a part of the jury fund of the county."

In construing the foregoing section, we think the reasoning adopted by the Supreme Court in the case of *Harrington v. The City of St. Louis*, 107 Mo. 327, would be the correct reasoning to follow. In that case the Sheriff of the City of St. Louis was claiming the right to hold all the fees collected by his office for the entire term and to retain from said aggregate amount of fees enough to make his compensation for each year the maximum amount allowed by law. In his case, \$10,000 was the maximum amount which he could retain for any one year, and he was claiming the right to hold out all fees until the end of his term and then retain for himself a total amount sufficient to make his compensation \$10,000 for each and every year of his term. His term was two years, and consequently he was claiming the right to withhold \$20,000 for the two years rather than having to settle at the end of each year. In passing upon that question, the Supreme Court said, 1. c. 329:

"There can be no doubt but the statements for each of the two official terms must be made the same as if the terms were held by different persons. This the circuit court held. But the court held that the sheriff could combine his accounts for the two years of the same term. The result of this ruling was to allow the sheriff to aggregate the receipts for the two years of the same term, then deduct the expenses for deputy hire, and retain for his own compensation \$20,000, the excess, if any, to be paid over to the city. In this ruling the court erred. The section of the constitution before quoted declared in plain terms that the fees of no such officer, exclusive of salaries actually paid to his deputies, shall exceed the sum of \$10,000, for any one year. This does not mean that the fees, over and above deputy hire, shall not exceed \$20,000 for two years. The law itself divides the official term into years

for all the purposes of applying the limitation as to the amount of fees which the sheriff may retain. Each year of the official term stands by itself. It follows that the sheriff must render a separate account of receipts and expenses for each year. When the fees for the particular year reach the amount of \$10,000, with expenses added, the balance must be paid over to the city. The excess of one year cannot be carried into another year for the purpose of bringing the fees of that year up to \$10,000, with deputy hire added. It is not the object of this law to make the clear compensation of the sheriff \$10,000, per annum. His compensation for each year must come from the fees and emoluments of the office for that year, but when they reach the clear sum of \$10,000, the balance must be paid over to the city."

It will be noted that the Supreme Court definitely held that "each year of the official term stands by itself" for the purpose of determining the compensation of the officer. In the present case it is clearly the intention of Section 11568 to limit the amount of compensation which the recorder may get for any one year. We do not think there is anything in the statute which indicates an intention that he should be guaranteed \$16,000 for his term. His compensation is calculated on an annual basis and is limited to the sum of \$4,000 annually. If the office should not earn \$4,000 in any year, his compensation for that year would not reach the maximum, but presumably the legislature contemplated that if the fees were not earned, he should not be paid.

In the case of *State ex rel. v. Pohlman*, 60 Mo. App. 445, the foregoing case of *Harrington v. City of St. Louis* was cited with approval, and in this latter case the court said that the case of *Harrington v. City of St. Louis* held

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"that each year of the official term stands by itself, and could not be helped out in its deficiency by any surplus earning of a succeeding year of the same term."

CONCLUSION

It is, therefore, the opinion of this office that the recorder of deeds in a county where the offices of recorder of deeds and clerk of the circuit court are separate must settle with the county court at the end of each year of his term, and that he may retain on such settlement not to exceed \$4,000 for the year for which said report is made, provided his office has earned that amount for that particular year, but that said officer is not entitled to make up any deficit in earnings in any year from the surplus of earnings in any other year.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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