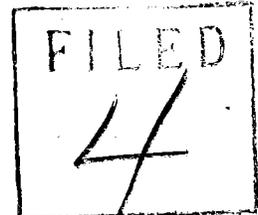


COUNTY CLERK OF JASPER COUNTY SALARY: Preparation of financial statement.

February 10, 1941

2-13



Honorable Ralph Baird
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This will acknowledge receipt of your letter of January 20, 1941, enclosing copy of a letter, dated January 3, 1941, written to you by Roscoe Claycomb, County Clerk, asking for an opinion on certain questions. The copy of which letter is as follows:

"We are now ready to prepare the 1940 County Financial Statement under the provisions of Laws of Missouri, 1933, page 353, as amended Laws 1935 page 317 and laws 1937 page 419. This statement must be prepared, published and approved by the State Auditor in order for the County Court to draw its salary after February.

"Until now, we have been working under the provisions of Section 11,811, Laws 1937 page 440, applying to counties of 70,000 to 80,000, which allows the County Clerk a certain salary but does not give him such salary in lieu of non-accountable fees. We understand that under the 1940 census we will now work under a section applying to counties of 75,000 to 90,000. However, this county falls in both brackets, being less than 80,000 and more than 75,000, our population being 78,654. See Laws 1937 page 442.

"Under Laws 1937 page 442, the County Clerk is allowed a salary of \$4,000 per year, said salary 'to be in lieu of all other salaries, fees, commissions or emoluments of whatsoever kind under and by reason of the terms of any statutory provisions outside of this article.'

"There is considerable doubt in my mind, as well as the County Court's minds, as to which of the two sections apply to this county. Also, we are in doubt as to whether I could be paid, legally, for preparing the County Financial Statement under Laws 1937, page 442. The County Clerk has always prepared the financial statement in this county, and is the logical person to prepare it at the rate specified by the amendment found at Laws 1937 page 419.

"The court and I would like to know:

"1. Under which of the overlapping and conflicting sections should we be working and paying and receiving salaries and fees?

"2. Who should the County Court employ to prepare the County Financial Statement?

"3. If the Court employes me to prepare the statement, could I legally collect the fee for preparing it, and keep such fee?

"All haste is necessary in obtaining this opinion, since preparation of the statement will entail bringing down to date certain records that it would be more convenient for us to defer until a later time, and with such records completed to Dec. 31, 1940, it would still require more than a month for preparation alone, working nights, as we must, in order to avoid conflict with our regular official duties. Thus we have only to about the middle of February to complete preparation of the copy for publication."

and asks for an opinion upon the questions contained in the copy of the letter.

I.

What was Section 11811 R. S. Mo. 1929, first appeared in our laws in 1874, and was entitled "an action in relation to clerk of courts of record." With various changes and amendments, it has remained in our law ever since. The last change was made by the General

Assembly of 1937, which repealed Section 11811 R. S. Mo. 1929, and enacted a new Section 11811 by Senate Bill 30, approved May 14, 1937. This new Section is as follows:

"The clerks of the county courts of this State and their deputies and assistants shall receive for their services annually, to be paid out of the county treasury in monthly installments at the end of each month by warrant drawn by the county court upon the county treasury, the following sums: In counties having a population of less than 7,500 persons, the sum of \$1,000.00 for themselves and the sum of \$600.00 for deputies and assistants; in counties having a population of 7,500 and less than 10,000 persons, the sum of \$1,100.00 for themselves and the sum of \$900.00 for deputies and assistants; in counties having a population of 10,000 and less than 11,500 persons, the sum of \$1,250.00 for themselves and the sum of \$900.00 for deputies and assistants; in counties having a population of more than 11,500 persons and less than 12,500 persons, the sum of \$1,300.00 for themselves and the sum of \$1,100.00 for deputies and assistants; in counties having a population of 12,500 and less than 15,000 persons, the sum of \$1,500.00 for themselves and the sum of \$1,300.00 for deputies and assistants; in counties having a population of 15,000 and less than 17,500 persons, the sum of \$1,700.00 for themselves and the sum of \$1,600.00 for deputies and assistants; in counties having a population of 17,500 and less than 20,000 persons, the sum of \$1,900.00 for themselves and the sum of \$1,800.00 for deputies and assistants; in counties having a population of 20,000 and less than 25,000 persons, the sum of \$2,100.00 for themselves and the sum of \$2,000.00 for deputies and assistants; in counties having a population of 25,000 and less than 30,000 persons, the sum of \$2,300.00 for themselves and the sum of \$3,000.00 for deputies and assistants in counties having a population of 30,000 and less than 70,000 persons, the sum of \$2,500.00 for themselves and the sum of \$3,500.00 for deputies and

assistants; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3,000.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office, provided such sum for such deputies and assistants shall not exceed \$5,000.00; in counties having a population of 80,000 and less than 90,000 persons the sum of \$4,000.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office; in counties having a population of 90,000 and less than 200,000 persons the sum of \$3,600.00 for themselves and such sum for deputies and assistants as the county court shall find necessary for the prompt and proper discharge of the duties of such office; in counties having a population of 200,000 and less than 300,000 persons, the sum of \$3,000.00 for themselves and a sum not exceeding \$16,000.00 for deputies and assistants, in such of said counties where court is held at more than one place, and in all other such counties the sum not exceeding \$5,000.00 for deputies and assistants. Provided, that the county court in all counties in this State having a population of 15,000 and less than 40,000 persons may allow the county clerks, in addition to the amount herein specified for deputies' or assistants' hire, a further sum not to exceed \$500.00 per annum, to be determined by the county court of such county. Provided, further, that the county court shall determine that the work required to be done by such clerk or clerks demands or requires such extra remuneration. It shall be the duty of the clerks of county courts to charge and collect in all cases every fee accruing to their offices by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month stating on what account such fees were charged and collected, together with the names of the persons paying or who are liable for

same, which said report shall be verified by the affidavit of such clerk. It shall be the duty of such clerks upon the filing of said report to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided."

at page 440. This is a general section of the statute, which would fix the amount of salary to be paid to all clerks of county courts in the State if there were no special legislation applying to them.

Also in Laws of 1937, at page 442, is Senate Bill 94, approved March 29, 1937, enacted by the General Assembly of that year, which was enacted for the purpose of amending Section 1, House Bill 263, enacted by the Fifty-seventh General Assembly in 1933, which is found in the Laws of 1933, at page 375. Section 1 of House Bill 263, enacted by the Fifty-seventh General Assembly is as follows:

"From and after the passage and approval of this section, the following salaries per annum shall be paid the hereinafter named officers of all counties in this State, which now contain, or may hereafter contain, a population of 75,000 inhabitants, and less than 90,000 inhabitants, viz: Collector of Revenue four thousand (\$4000.00) dollars; Judges of the County Court twenty-seven hundred (\$2700.00) dollars each; Clerk of the Circuit Court four thousand (\$4000.00) dollars; clerk of the County Court four thousand (\$4000.00) dollars; Recorder of Deeds four thousand (\$4000.00) dollars; County Treasurer thirty-two hundred (\$3200.00) dollars; County Assessor four thousand (\$4000.00) dollars; all of said salaries to be paid in monthly installments of the first day of each month from the available funds of the County Treasury. Said salaries to be in lieu of all other salaries, fees, commissions or emoluments

of whatsoever kind under and by reason of the terms of any statutory provisions outside of this article."

The amendment of 1937 made no change which effected the county clerk. The change made was merely to increase the salary of the recorder of deeds, in cities within the population classification provided for in that act.

Also a portion of House Bill 263 of the Fifty-seventh General Assembly, is Section 6, found on page 337, Laws of 1933, which is as follows:

"All provisions of law outside of this act, allowing any fee, compensation, or emolument to either of the before mentioned officers, to be paid out of the Treasury of any such county, or hereby declared to be ineffective as to any and all such counties, and all fees, compensation, and emoluments of every kind to any of such officers by the terms of any contract or any such provision of law outside of this article, due or receivable from any source other than the county treasury or upon the taking effect of this act, hereby transferred to the county and shall be paid into the county treasury as hereinafter provided; and no such officer shall receive any compensation or retain any fees, compensation, or emoluments from any provision of law, otherwise than in this act provided."

The copy of the letter of the county clerk states that the population of Jasper County is 78,654. In order to determine under which law, Section 11811 as amended by Laws of 1937, or Section 1 of House Bill 263 of the Fifty-seventh General Assembly, the county clerk of Jasper should be paid, it is necessary that these sections should be considered together.

Coble v. Scullin Steel Co. 54 S. W. (2d) 777, l. c. 779:

"In construing the statute we must read all of the sections involved together and harmonize them, if possible. State ex rel. Dean v. Daves, 321 Mo. 1126, 14 S. W. (2d) 990, loc. cit. 1001; Johnson v. Kruckemeyer, 224 Mo.

App. 351, 29 S. W. (2d) 730, loc. cit. 732 and cases cited; Biswell v. St. Louis San-F. Ry. Co. (Mo. App.) 49 S. W. (2d) 203, loc. cit. 204."

And in considering them it is necessary to bear in mind certain well established rules of statutory construction. Among these rules are the following, which are in the case of Keller v. State Social Security Commission 137 S. W. (2d) 989, l. c. 990:

"Where the language of a statute is plain and unambiguous nothing contrary to the evident intent can be implied. State ex rel. Jacobs-meyer v. Thatcher, 338 Mo. 622, 92 S. W. (2d) 640. A statute should be so construed as to give effect to the legislative intent. State ex rel. Wabash R. Co. v. Shain, 341 Mo. 19, 106 S. W. (2d) 898. A statute that is clear in its terms and leaves no room for construction must be enforced as written. Dahlin v. Missouri Commission for Blind, Mo. App., 282 S. W. 420."

And also in the case of State ex rel. McDowell, Inc., v. Smith, 334 Mo. 653, l. c. 671:

"It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular, provisions.' (1 Lewis-Sutherland Stat. Const. (2 Ed.), sec. 274, pp. 537-539. See, also, State ex rel. Rutledge v. School Board, 131 Mo. 505, 516, 33 S. W. 3; Manker v. Faulhaber, 94 Mo. 430, 440, 6 S. W. 372.)"

House Bill 263, Laws of 1933, at page 375, is a special act relating to the payment of salaries of all officers in counties which have, or may thereafter have a population of not less than 75,000 inhabitants, or more than

90,000 inhabitants. It is full and complete in every respect. And as pointed out above, Section 11811 is the same section, and would apply to all county clerks. Neither act is ambiguous, the language of each is proper, and standing alone either is easily understood, but the terms of the acts conflict in regard to the amount of salary that the county clerk should receive in counties having a population of not less than 75,000, nor more than 90,000 inhabitants, and in counties having a population of between 70,000 and 80,000 inhabitants. In accordance with the rule above quoted from the State ex rel. McDowell, Inc., v. Smith, supra, it would appear that the county clerk of Jasper County should be paid in accordance with the terms of Section 1, of House Bill 263, Laws of 1933, as re-enacted Laws of 1937, page 442.

II.

The preparation and publication of the county financial statement is directed and provided for in Sections 12165 and 12166 R. S. Mo. 1929. Both of these sections have been amended since, and published in 1929. Section 12165 was amended by Laws of 1933, at page 453, and by the Laws of 1935, page 317; and Section 12166 was amended by Laws of 1937, page 412. Section 12165, Laws of 1935, directing the preparation of financial statements, goes at great length into the details of preparation, and contains the following:

"At the end of the statement the person designated by the county court to prepare the financial statement herein required shall append the following certificate:

"I, the duly authorized agent appointed by the county court of county, State of Missouri, to prepare for publication the financial statement as required by section 12165 of the Revised Statutes of Missouri, 1929, hereby certify that I have diligently checked the records of said county and that the above and foregoing is a complete and correct statement of every item of information required in said section 12165 of the Revised Statutes of 1929 for the year year ending December 19..... and especially

have I checked every receipt from every source whatsoever and every disbursement of every kind and to whom and for what each such disbursement was made and that each such receipt and disbursement is accurately shown. If for any reason complete and accurate information is not given the following shall be added to the certificate) Exceptions: the above report is incomplete because proper information was not available in the following records. which are in the keeping of the following officer (or officers). The person designated to prepare the financial statement shall give in detail any incomplete data called for by this act.
 Date.
 Officer Designated by County Court to prepare financial statement required by Section 12165, Revised Statutes 1929.

"Or if no one has been designated said statement having been prepared by the county clerk, signature shall be in the following form:

"Clerk of the County Court and ex-officio officer designated to prepare financial statement required by Section 12165 Revised Statutes 1929."

This clearly indicates that it is discretionary with the county court whether it is to have the county clerk prepare the financial statement.

Section 12166 R. S. Mo. 1929, as amended by Laws of 1937, at page 419, is as follows:

"The statement shall be set in the standard column width measure that will take the least space and the publisher shall file two proofs of publication with the county court and the court shall forward one proof to the state auditor and shall file the other in the office of the court. The county court shall not pay the publisher until said proof of publication is filed with the court and shall not pay the person designated to prepare the statement for the preparation of the copy for said statement until the state auditor shall have notified the court that said proof of publication has been

received and that it complies with the requirements of this Section. The statement shall be spread on the record of the court and for this purpose the publisher shall be required to furnish the court with at least two copies of said statement that the same may be pasted on the record. For the preparation of the copy for the statement the court may allow a sum not less than ten cents and not to exceed thirty cents for every hundred words and figures, which sum, if allowed to the clerk of the court, shall be in addition to the salary or fees allowed him by law, and no pay shall be allowed for pasting a printed copy in the record. In submitting bill to the county court the person preparing the statement and the publisher shall itemize the amount as properly chargeable to the several funds and the county court shall pay out of each fund in the proportion that each item bears to the total cost of preparing and publishing said statement and shall issue warrants therefor. Provided, any part not properly chargeable to any specific fund shall be paid from the fund from which officers salaries are paid. The state auditor shall notify the county treasurer immediately of the receipt of the proof of publication of the statement in this act required. After the first of April of each year after the effective date of this act the county treasurer shall not pay or enter for protest any warrant for the pay of any judge of any county court until notice is received from the state auditor that the proof of publication herein provided for has been filed. Any county treasurer paying or entering for protest any warrant for any judge of the county court prior to the receipt of such notice from the state auditor shall be liable on his official bond therefor. Within twelve months after the effective date of this act the state auditor shall prepare sample forms for financial statements and shall mail the same to the county clerks of the several counties in this state, but failure of the auditor to supply such form shall not in anywise excuse any person from the

performance of any duty imposed by this act. If the county court shall employ any person other than a bonded county officer to prepare the financial statement herein required the county court shall require such person to give bond with good and sufficient sureties in the penal sum of one thousand dollars for the faithful performance of his duty. If any county officer or other person employed to prepare financial statement herein provided for shall fail, neglect, or refuse to, in any manner comply with the provisions of this act he shall, in addition to other penalties herein provided, be liable on his official bond for dereliction of duty." (Underscoring ours).

The underscored passages in the above section also recognize this discretionary power in the county court.

III.

Section 6 of House Bill 263, Laws of 1933, at page 375, l. c. 377, prohibits any of the officers mentioned in Section 1 of such act from receiving any other additional fees, compensation, or emoluments. And the last sentence of Section 1 of this act as amended by Laws of 1937, at page 442 is as follows:

"It shall be the duty of such clerks upon the filing of said report to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided."

It is quite clear that if the county clerk is paid the salary directed in Section 1 of House Bill 263, Laws of 1933, as re-enacted by Laws of 1937, at page 440, he cannot receive any additional compensation.

Hon. Ralph Baird.

- 12 -

February 10, 1941.

CONCLUSION.

It is the conclusion that the county clerk of Jasper County should be paid in accordance with the provisions of Section 1, House Bill 263, Laws of 1933, at page 377, as re-enacted by the Laws of 1937, at page 442; that it is within the discretion of the county court of Jasper County to employ whomsoever it chooses to prepare the financial statement for publication; and also, that if the county court should designate the county clerk to prepare the financial statement for the printers proofs thereof, the clerk would be prohibited from receiving any additional compensation therefor.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General.

W. O. JACKSON
Assistant Attorney General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

WJB/me

WOJ/me