

CIRCUIT CLERKS: Compensation of deputy circuit clerks is fixed by circuit court, and county court may not alter.

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August 25, 1941  
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Honorable Andrew Howard  
Prosecuting Attorney  
Christian County  
Ozark, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated February 12, 1941, which is as follows:

"On December 17, 1940, you rendered an opinion over the signatures of Hon. W. J. Burke and Hon. Covell R. Hewitt to the Hon. Tom R. Moore, Judge of the 31st. Judicial District, in regard to the appointment and compensation of deputy circuit clerks in Christian County, Missouri.

"The Christian County Court in balancing the budget made an order reducing the salary of the deputy circuit clerks from one hundred dollars to ninety dollars a month without any objection on the part of the Circuit Judge and also without the Circuit Judge making any written recommendation on it or changing the order appointing the deputy clerks. I am enclosing a certified copy of the County Court's order and also a certified copy of the appointment of the deputies.

"The deputies question the authority of the County Court to reduce their salaries in such a manner under the circumstances and in view of the provisions of Section 18 of the 1933 Budget Law.

"The County Court takes the position that they do have this authority under Section 8 of the 1933 Budget Law and the opinion that you gave Hon. Tom R. Moore on the matter.

"We would very much appreciate your opinion as to whether or not the Christian County Court acted within its authority in reducing the salaries of the deputies in the manner above stated."

Submitted with the request are certified copies of the order of the circuit clerk appointing a deputy, the order fixing the salary and a certified copy of the order of the county court made at the February Term, 1941, purporting to reduce the salary of the deputy circuit clerks from \$100.00 per month to \$90.00 per month.

Section 13434, Revised Statutes of Missouri, 1939, provides for the appointment of deputy circuit clerks and their compensation as follows:

"Every clerk of a circuit court shall be entitled to such number of deputies and assistants to be appointed by such official, with the approval of the judge or judges of the circuit courts, as such judge or judges shall deem necessary for the prompt and proper discharge of the duties of his office. The judge or judges of the circuit court in its order permitting the clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which said order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any

deputy or assistant, and may regulate the time of his or her employment, and the circuit court may, at any time, modify or rescind its order permitting an appointment to be made."

This section was enacted by the 59th General Assembly in Laws of 1937, at page 446, and was a reenactment of Section 11812, Revised Statutes of Missouri, 1929. The 1929 statute was amended in Laws of 1933, at page 369, which amendment provided that deputy circuit clerks were appointed by the circuit clerk with the approval of the county court, and they fixed the compensation.

While the 1933 amendment was in existence, a question as to its proper interpretation arose in St. Louis County, and was subsequently decided by the St. Louis Court of Appeals in State ex rel. Hill v. Thatcher, 94 S. W. (2d) 1053. The court pointed out the change made by the Legislature and its effect in the following language, l. c. 1056:

"In this connection we call attention to the fact that when the Legislature in 1933 repealed the then existing section 11812, Rev. St. of Mo., 1929 (Mo. St. Ann., sec. 11812, p. 7031), and enacted a new section of the statute under the same number, a comparison of the new with the old section will disclose that the only change accomplished was to take the approval of the selection of deputies and assistants of the clerk of the circuit court and the fixing of the compensation of such deputies and assistant clerks from the circuit court and place it in the hands of the county court."

This case was, of course, decided prior to the enactment in 1937 of the section above quoted, and it restores the former authority of the circuit court to approve the selection of deputy circuit clerks and to fix their compensation.

The census figures for the 1940 decennial census are not immediately available, but the 1930 census discloses that Christian County had a population at that time of 13,169, and we may safely assume that the present population is less than 50,000, which bring it within the operation of Sections 10910 to 10917, inclusive of the Revised Statutes of Missouri, 1939, which are a portion of the "County Budget Act." We will not set out these sections of the Budget Law in full because both yourself and the court are familiar with them, and they are readily available to you.

We think the precise question here presented was decided by the Missouri Supreme Court in Gill v. Buchanan County, 142 S. W. 2d 665. In that case, a county judge in Buchanan County brought suit to recover a portion of his salary, and the county presented the defense that there was not a sufficient amount provided in the budget to pay the additional salary which the plaintiff claimed. We find the following in the opinion of the court, l. c. 668:

"The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature

has put them in and only the Legislature can take them out or take out any part of these amounts. This court has held that the purpose of the County Budget Law was 'to compel \* \* \* county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S. W. 2d 340, 342.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."  
(Italics ours)

While Buchanan County has a population of more than 50,000, the duties of the county court under Section 10917 to revise and amend the estimates in counties of less than 50,000 are the same as the powers vested in the county court in Section 10927, Revised Statutes of Missouri, 1939, which applies to counties of more than 50,000. Since the salary

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of a deputy circuit clerk is fixed by the circuit court under authority of the statutes and the county court has no statutory authority to alter the salaries when fixed, it must be considered that the salary of deputy circuit clerks is fixed by the Legislature, and the above case is directly applicable.

Furthermore, the statutes make provision for the method of procedure when sufficient funds are not available for the payment of the salaries of the county officers. Section 10912, Revised Statutes of Missouri, 1939, is in part as follows:

" \* \* \* If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4."

This section provides that if insufficient funds are available to pay each county office in full for all salaries and supplies, the available funds must be apportioned to each office, and certainly the order of the county court, a certified copy of which accompanies your request, does not purport to follow this statutory mandate. We do not say that if the above statute had been followed that any officer whose annual salary is fixed could not recover his full salary from the county by appropriate action since that question is not here presented.

#### CONCLUSION

In view of the foregoing, it is the conclusion of this department that the order of the county court of Christian County, made on the 8th day of February, 1941,

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which purported to reduce the salaries of two deputy circuit clerks from \$100.00 per month to \$90.00 per month each, is void, and that the circuit court has the sole power to fix the compensation of deputies to the circuit clerk in Christian County.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

RLH:VC