

OFFICERS: Annual salary of county clerk is based upon
ANNUAL SALARY: term year and not upon calendar year, payable
COUNTY CLERK: in twelve monthly installments.

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February 21, 1945

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. B. E. Ragland,
Chief Clerk

Dear Sir:

Recently you requested an opinion upon the following:

"We request an official opinion on the following subject: A county clerk and his deputies assumed office January 4, 1943. Are they entitled to compensation for the entire month of January 1943, or for only 28 days?"

By virtue of Section 13433, R. S. Mo. 1939, and Laws of 1943, page 874, the respective county clerks and their deputies were in 1943, and are now, compensated by an annual salary paid in monthly installments. The exact language used in these acts is:

"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: * * * * *

County clerks and their deputies are officers (Ward v. Christian County, 111 S. W. (2d) 182, 341 Mo. 1115; State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S. W.

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655); and are entitled to the salaries of their respective positions as an incident to their office, and, irrespective of the amount or value of services performed. State ex rel. Nicholai v. Nolte, 180 S. W. (2d) 740; Coleman v. Kansas City, 173 S. W. (2d) 572, 351 Mo. 254. It seems unnecessary to cite authority to sustain the position that an officer is not entitled to the salary of his office until he possesses the title to it.

The crux of the problem herein presented is whether the annual salary of a county clerk and his deputies is based upon a calendar year or a year of twelve consecutive months. If the former, then the first three days of January, 1943, should be deducted from the year's salary; but, if the latter, it would make no difference if such three days were subtracted at the beginning of the term as they would be added at the end of the term, assuming that the clerk and his deputies served the entire period. In other words, if the term "annual salary" refers to a twelve months' period and not a calendar year, such as the year beginning January 1, 1943, and ending December 31, 1943, the clerk and his deputies would be entitled to full year's salaries for the period beginning January 4, 1943, and ending January 3, 1944.

This exact question was ruled by the Supreme Court in the case of State ex rel. Harvey v. Linville, et al., 300 S. W. 1066, 318 Mo. 698. In determining the amount of the annual salary of a superintendent of schools, the following was held, l. c. 1067:

"* * * 'Annual salary,' as used in said section 10938, means salary for each year of the incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that 'annual,' as applied to salaries, means not the calendar years, but the years of the incumbent's term, which in the case of relator begins on the 1st day of April each year."

CONCLUSION

It is, therefore, the opinion of this Department that inasmuch as the annual salary of a county clerk and his depu-

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ties is based upon a twelve months' period and not a calendar year, and when such officers assumed office on January 4, 1943, and continued in office until January 3, 1944, they are entitled to their full annual salaries paid in twelve monthly installments.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

VCT:CP