

CIRCUIT CLERK: When circuit judge of third class county has approved
COUNTY COURT appointment of deputies and assistants to circuit
BUDGET LAW: clerk, and set salaries, county must pay such salaries,
even though not anticipated in county budget.
Salaries to be paid out of class 6 of county budget.

*Copy to
J. W. ...*

September 15, 1947

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Honorable L. Madison Bywaters
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, which reads as follows:

"Judge James S. Rooney has requested that I write to you for an official opinion from your department concerning the following question:

"Does a Circuit Judge have the legal authority to order the County Court to pay for extra deputy assistance or stenographical assistance in the office of the Circuit Clerk of Clay County, Missouri, such to be paid for out of either Class 4 or Class 6 of the county budget, in instances where there is not a sufficient amount set out in the Circuit Clerk's budget to take care of the same."

The procedure to be followed in providing the necessary deputies and assistants for the circuit clerk of third class counties is found in Section 4 of House Bill No. 773 of the 63rd General Assembly, found in Laws of Missouri, 1945, page 1527. Such section reads as follows:

"The circuit clerk in counties of the third class, wherein there shall be a separate circuit clerk and recorder, shall be entitled to such number of deputies and assistants to be appointed by such official, with the approval of the judge of the circuit court, as

such judge shall deem necessary for the prompt and proper discharge of the duties of his office. The judge of the circuit court, in his order permitting the circuit clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered on record, and a certified copy thereof shall be filed in the office of the county clerk. The circuit clerk 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."

Under the provisions of this section the determination of the necessity of such deputies and assistants, the salaries to be paid to such deputies and assistants, and the period such deputies and assistants may be employed is left entirely up to the circuit judge, and neither the necessity for such employees nor the salaries as set by the circuit judge can be inquired into by the county court.

Section 5 of House Bill No. 773 of the 63rd General Assembly provides as follows:

"All annual salaries provided in this act shall 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."

Such salaries, therefore, are obligations of the county and must be paid in monthly installments by the county when vouchers for such salaries are certified to the county court. While the estimate for the salaries of such deputies and assistants should have been submitted in the budget estimate of the circuit clerk for the current year, the failure of such circuit clerk to do so cannot relieve the county of the obligation to pay such salaries.

In the case of Gill v. Buchanan County, 142 S. W. (2d) 665, the Supreme Court of Missouri had before it the question of whether the failure of the county court to include the whole of a county judge's salary in its budget would preclude the recovery

of such part of the county judge's salary as was not included in the budget. The court said at l. c. 668-669:

" * * * 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 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." (Emphasis ours.)

The salaries of deputy circuit clerks and assistants are not fixed by the Legislature, but the Legislature has delegated the authority to fix such salaries to the circuit judge, and, therefore, as a matter of law, the salaries of deputy circuit clerks and assistants are included in the budget, whether estimated for or not.

Section 10914, R. S. Mo. 1939, provides, in part, as follows:

"The court shall show the estimated expenditures for the year by classes as follows:

* * * * *

"Class 6. * * * Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. * * *"

Under authority of this provision the salary claims of deputy circuit clerks and assistants should be paid out of class 6 funds of the county budget if there are present funds in class 6 of the budget or if funds in class 6 of the budget are anticipated.

Honorable L. Madison Bywaters

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CONCLUSION

After the circuit judge of Clay County has approved the appointment of deputy circuit clerks and assistants, and set the salaries of such deputies and assistants, the county must pay the salaries of such deputies and assistants, even though such salaries were not included in the budget estimate of the circuit clerk for the current year. Such salaries are payable out of class 6 funds of the county budget.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR