

MAGISTRATES: Salaries of clerks of magistrate courts may be increased by county court, said increase to be paid by the county.

August 8, 1947

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Honorable H. L. C. Weier
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Sir:

This will acknowledge your request for an official opinion which reads:

"Under Laws 1945, S. B. No. 207, Sec. 22, the Clerk of the Magistrate Court in this county, which has a population of more than 30,000 but not more than 40,000 inhabitants, receives a compensation of \$1800.00 paid by the State of Missouri. A member of our County Court has requested that I obtain your opinion whether the County Court has the authority to supplement this salary by payment of an additional amount to the Clerk of the Magistrate Court out of county funds.

"Sec. 21 of the same law provides that additional clerks, deputy clerks and other employees may be provided by the county court at county expense, but does not specifically state that an additional amount may be paid to the Clerk by the county, in order to supplement the amount paid by the State.

"I would appreciate it if you would send me an opinion with regard to this matter."

The question presented in your request asks if the salary of the clerk of the magistrate court which is paid by the state can be supplemented or increased by the county court, said increase to be paid by the county.

Reference is made in your request to Section 21, Laws Missouri 1945, page 775, which, in part, reads:

"In all counties each magistrate

shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this act for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be required.
* * * *(Underscoring ours.)

In an opinion submitted December 11, 1946, to the county court of Andrew county this office held that the salaries of clerks, deputy clerks and other employees of the magistrate court are fixed by the magistrate and that said salaries of all the clerks, deputy clerks and employees who are paid by the state, cannot exceed the limitation provided in Section 22, Laws Missouri 1945, page 775.

Under Section 21, supra, the county court could only pay salaries of clerks, deputy clerks and other employees out of county funds who were additionally provided for because of an existing need. In such a case where the county court did provide for additional personnel their entire salaries were paid by the county. There was no statutory authority authorizing the county court to supplement or increase the salaries of clerks, deputy clerks and employees, who were originally appointed and paid by the state, and to pay said increase out of county funds.

However, there has been recent legislation enacted which has a bearing on this question. The 64th General Assembly enacted Senate Bill 94 which repealed several sections of Senate Bill 207 enacted by the 63rd General Assembly. Among those was Section 21, supra, and a new section known as Section 21 was enacted which, in part, provides:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the

proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this act for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be required and to provide funds for the payment of salaries or parts of salaries of clerks, deputy clerks and other employees, in addition to the amounts payable by the state under this act. * * * (Underscoring curs.)

The underscored portion of the above quoted statute is new matter and provides the principal change over the old Section 21 appearing at page 775, Laws Missouri 1945.

We believe that the added language appearing in Section 21 of Senate Bill 94 extends the authority of the county court relative to paying salaries of clerks, deputy clerks and other employees of the magistrate court. It says that the county court may provide funds to pay "salaries or parts of salaries of clerks, deputy clerks and other employees, in addition to the amounts payable by the state under this act." In other words, if, under Section 22, Laws Missouri 1945, page 775, the clerk of the magistrate court in Jefferson County which has more than 30,000 but less than 40,000 inhabitants, receives an annual salary from the state of \$1800.00, we believe that under Section 21 of Senate Bill 94 the county court could provide for the payment of a sum of money additional to the amount payable by the state, said additional sum to be paid by the county. To do this would be increasing the salary of the magistrate court beyond what is payable by the state, and paying said increase out of county funds.

Senate Bill 94 was approved by the Governor July 7, 1947, but it was enacted without an emergency clause and therefore becomes effective 90 days after the June 12th recess of the 64th General Assembly, which would be September 10, 1947.

CONCLUSION

It is, therefore, our opinion that under Section 21 of Senate

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Bill 94, which becomes effective September 10, 1947, the salaries of the clerks of the magistrate courts can be increased by the county court beyond what is payable by the state, said increase to be paid by the county court out of county funds.

Respectfully submitted,

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RFT:nw

APPROVED:

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