

OFFICERS: Circuit Clerk and Ex-officio Recorder entitled to
SALARIES: additional compensation provided in Senate Bills
247 and 274, 64th General Assembly.

June 24, 1948



Honorable Robert D. Frith
Prosecuting Attorney
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Chillicothe, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Our Circuit Clerk and Ex officio Recorder of Deeds informs me that Senate Bill No. 247 and Senate Bill No. 274 have been passed by the General Assembly and signed by the Governor. He and the County Court requested an opinion from me as to when these bills become effective and as to when the salary increase shall be due and payable to him.

"I would appreciate your opinion on this."

Senate Bill No. 247, 64th General Assembly, was truly agreed to and finally passed, and sent to the Governor on April 19, 1948. Senate Bill No. 274, 64th General Assembly, was truly agreed to and finally passed, and sent to the Governor on March 18, 1948. Both bills were approved by the Governor in due time.

Section 29 of Article 3 of the Constitution of Missouri of 1945, provides that "If the General Assembly recesses for thirty days or more, it may prescribe, by joint resolution, that laws previously passed and not effective shall take effect ninety days from the beginning of such recess." The 64th General Assembly did recess for a period beginning April 19, 1948, and ending May 20, 1948. Before such recess, both houses approved a resolution providing that all laws passed on or before April 19, 1948, and not effective shall take effect on July 18, 1948 (Senate Journal, p. 1937). Senate Bills Nos. 247 and 274 are covered by that resolution and, therefore, will become effective on July 18, 1948.

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There is the additional question of whether or not the present holder of the office of circuit clerk and ex-officio recorder is entitled to receive the compensation provided by these bills. Section 13 of Article 7, Constitution of Missouri, 1945, contains the following provision "the compensation of state, county and municipal officers shall not be increased during the term of office, nor shall the term of any office be extended". An identical provision was found in Section 8 of Article 14 of the 1875 Constitution. That provision was considered by the courts of this state on several occasions and they uniformly held that, where additional duties are imposed upon an officer, the constitutional provision referred to does not prevent his receiving additional compensation for such additional duties. (See Harvey v. Sheehan, 269 Mo. 421, 190 S.W. 864.)

Do these bills impose additional duties upon the circuit clerk and ex-officio recorder in counties of the third class? Senate Bill No. 247 contains the following provision:

"Section 6a. The circuit clerk and recorder in counties of the Third Class, wherein the offices shall have been combined, as recorder of the county, shall in addition to other duties imposed upon him by law, have the additional responsibility to prepare and keep a separate alphabetical list of the names of all residents of the county who have been discharged from the Armed Forces of the United States, which list shall show such veteran's name, post office address, and the branch of service from which he was discharged, the date of his discharge and the date of the recording of same, together with the book and page wherein such discharge is so recorded, which list shall be maintained by the recorder for public inspection and shall be up to date at all times; and in addition thereto, said recorders in the said counties shall have the additional responsibility of furnishing to all persons who have so reported their discharge from the Armed Forces of the United States one certified copy of such discharge upon request of such veteran, or if such veteran shall have deceased since the recording thereof, then by his heir, executor or administrator. For each name which the recorder shall append to

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the aforesaid alphabetical list, and for each certified copy of such discharge as he shall furnish, the said recorder shall receive the sum of fifty cents, to be paid out of the county treasury, which fees shall not be deemed to be accountable fees within the meaning of Section 3 of this act:".

In the absence of Senate Bill No. 247, the officer in question in such counties was not required to maintain an alphabetical list of discharged service men. He was required to record, without fee or compensation, discharges from the armed forces (Laws, 1943) p. 643), but there was no requirement that an alphabetical list containing the information required in Senate Bill 247 be maintained.

Section 15077, R. S. Mo. 1939, provides that whenever a certified copy of a public record is required to perfect the claim of a service man for a United States pension or other claim upon the government of the United States the custodian of the records shall supply such certified copy without any fee or compensation. However, Section Bill 247 requires the recorder to furnish a certified copy of discharge, upon request, without regard for the reason therefor. Consequently we are of the opinion that Senate Bill No. 247 does impose additional duties upon the circuit clerk and ex-officio recorder.

Senate Bill No. 274 provides a new method for the selection of grand and petit jurors in counties of the third and fourth classes. Heretofore such jurors were chosen by the county court, and the circuit clerk had no duties in connection therewith. (Sec. 705-711 R. S. Mo. 1939). Senate Bill No. 274 provides for their selection by a board of jury commissioners. Section 704-A of the bill reads as follows:

"In each county of the third and fourth class the clerk of the circuit court and the judges of the county court together with the circuit judge as provided in Section 13394, Revised Statutes of Missouri, 1939, a majority of whom shall constitute a quorum for the transaction of business, shall constitute a board of jury commissioners for their respective counties. The clerk of the circuit court of such counties shall be ex-officio clerk of the board of jury commissioners, and his duty shall be to assist the board in the performance of the

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clerical part of their work, and such clerk shall perform such other duties and services as may be required of him by the board or any member thereof, with respect to the things to be done by the board of jury commissioners, as provided by law. The time, place and manner of meetings of the board, and rules for performing its duties shall be fixed by the board."

Section 717 of the bill provides that the circuit clerk shall receive as additional compensation for those duties the sum of three hundred dollars per year in third class counties, and one hundred fifty dollars per year in fourth class counties. Inasmuch as his duties in this capacity are new and additional ones, the present holders of the office in counties of those classes are entitled to receive such compensation, beginning on the effective date of such Act.

CONCLUSION

Therefore, we are of the opinion that, beginning on the effective date of Senate Bills No. 247 and No. 274, to-wit, July 18, 1948, the circuit clerk and recorder now holding said office in counties of the third class, where such offices have been combined, will be entitled to receive the additional compensation provided in said Acts.

Respectfully submitted,

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APPROVED:

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