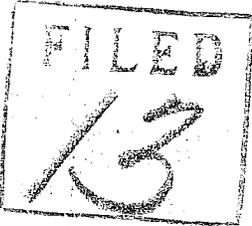


MAGISTRATES: Salaries of magistrate, clerk, deputy clerk and
COURTS: other employees in court of "additional magistrate"
COUNTIES: established pursuant to Section 18, Article V,
Constitution of Missouri 1945, to be paid by county
wherein located; and fees derived from operation
of such court to be retained by such county and
used for such purpose.



September 15, 1954

Honorable Hilary A. Bush
County Counselor, Jackson County
Suite 202 Courthouse
Kansas City, Missouri

Attention: Louis Wagner, Asst. County Counselor

Dear Sir:

Reference is made to your request for an official opinion
of this department reading as follows:

"During the early part of last year a petition for the creation of an additional magistrate district was filed in the Circuit Court in Independence, Missouri, and after a hearing the Court entered the decree creating such an additional district. Thereafter a magistrate and clerk were appointed in such district, and such magistrate, clerk and employees of that office have been paid by the County and the fees so collected have likewise been paid into the County.

"On January 1, 1955, an elected magistrate will assume his duties for such district for the first time. It has been the opinion of this office that since an additional magistrate was created under Section 482.150 R.S. Mo. '49 and the salary paid to such magistrate by the County, and since under Section 482.150 the County is obligated to pay for the additional magistrate and has assumed the obligation of paying the salaries of the clerk, deputy clerk and other employees of such magistrate, that all fees so charged by such clerk or magistrate, pursuant to Section 483.610, shall be paid into the County Treasury as provided by Section 483.620.

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"The question has arisen as to whether or not the County is liable for the payment of such salaries and is entitled to the fees so charged since for the first time a magistrate for this district will be elected instead of being an appointed officer.

"I shall appreciate hearing from you in this respect."

The "additional magistrate" referred to in your letter is one whose office has been created pursuant to the provisions of Section 18, Article V, Constitution of Missouri 1945, and statutes enacted to implement such constitutional provision.

Subsequent to the creation of such "additional magistrate" courts and the original filling of such office by appointment of the Governor, the office is thereafter to be filled by an election of the people. The term of such officer is thereafter coincident with the terms of other magistrates in the same county. We direct your attention to the following portion of Section 482.010 RSMo 1949:

"* * * Such additional magistrates shall be appointed by the governor when authorized by proper order of the circuit court certified to him, and such appointees shall hold office until the next general election at which election a successor shall be elected to hold office for the unexpired term or full term as the case may be, said terms to be identical with that of other magistrates."

With respect to the salary of an "additional magistrate" whose office has been created under the constitutional and statutory provisions referred to, we find the following portion of Section 482.150 RSMo Cum. Supp. 1953 to be germane to your inquiry:

"1. The salaries of all magistrates shall be paid by the state, except that the state shall not pay the salaries of additional magistrates whose offices are created by order of the circuit court as provided for in article V, section 18 of the constitution; but the districts assigned to such additional magistrates shall be designated

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as 'additional magistrate districts' and the salaries of such magistrates shall be paid by the county. * * * (Emphasis ours.)

We also find the following portion of Section 483.490 RSMo Cum. Supp. 1953 to be pertinent to that phase of your inquiry directed to the payment of the salaries of clerks, deputy clerks and employees of such "additional magistrates":

"1. Salaries of clerks, deputy clerks and employees provided for in section 483.485 shall be paid by the state within the limits herein provided upon requisition filed by the judge of the magistrate court; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in section 482.010, RSMo 1949, shall be paid by the county as the salaries of such magistrates are required to be paid. * * * (Emphasis ours.)

Bearing upon the question of the disposition of fees charged and collected in such "additional magistrate" courts, we direct your attention to paragraph 1 of Section 483.620 RSMo 1949, which reads as follows:

"1. In all cases where additional magistrates are selected to fill offices created by order of the circuit court as provided in section 482.010, RSMo 1949, it shall be the duty of the clerk of each such magistrate court, with the approval of the magistrate to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month pay over to the county treasurer all moneys collected by him as fees taking from said treasurer two receipts therefor, one of which he shall immediately file with the county clerk, and at the end of each month such magistrate shall make out an itemized and accurate list of all fees collected by him, or by the magistrate, giving the name of the person or persons paying the same, and turn the same over to the county treasurer."

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And to paragraph 3 of the same section, which reads:

"3. All magistrate fees received by the county treasurer shall be deposited by him in a special fund to be denominated 'additional magistrate fund,' and withdrawals may be made during the current fiscal year only for the payment of salary of additional magistrate and clerks, deputy clerks and employees of such additional magistrate. The balance, if any, remaining in said fund at the end of the year may be transferred to the general revenue fund of the county."

It seems obvious to us that the foregoing constitutional and statutory provisions have established a scheme through which the number of magistrate courts in any county may be increased when an apparent need therefor exists and such is shown to the appropriate circuit court. Such offices of "additional magistrates" are not thought to be temporary in nature, but as appears from the language incorporated in Section 482.010 RSMo 1949, are to be established only when it is made to appear to such circuit court that the need is "permanent." It also appears that what is done by the circuit court is the creation of an entirely new office within the county, whose first incumbent is appointed, but whose successors are thereafter elected at the same elections at which other magistrates in the county are elected. Nothing appears in any of the statutes relating either to the salaries of the magistrates and other court officials, nor with respect to the fees collected in such counties, which indicates any change in the mode of payment thereof with respect to whether or not the incumbent magistrate has been "appointed" or "elected." On the contrary, we observe in Section 483.620 RSMo 1949, which deals specifically with such "additional magistrates" the use of the word "selected" with reference to incumbents in such offices. This, of course, is broader than either "appointed" or "elected" and is equally applicable to persons whose incumbency stems from either source.

CONCLUSION

In the premises, we are of the opinion that the salaries of "additional magistrates" whose offices have been created by appropriate circuit courts pursuant to constitutional and statutory authorization, and clerks, deputy clerks and other employees of such "additional magistrates" are to be paid by the counties wherein such courts are located, and that without

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regard to whether the incumbent in such newly created office has been "appointed" or "elected" thereto.

We are further of the opinion that the fees collected in the courts of such "additional magistrates" are to be deposited with the county treasurer and by such officer held in a separate fund to be denominated the "additional magistrate fund" to be used solely for the payment of such salaries, and the excess therein, if any, at the end of any fiscal year, may be disposed of by transferring the same to the general revenue fund of such counties.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will P. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl