

May 4, 1971

Answer by letter-Gardner

OPINION LETTER NO. 164

Honorable Hal E. Hunter
Prosecuting Attorney
New Madrid County Courthouse
New Madrid, Missouri 63869

Dear Mr. Hunter:

This is in response to your request for an opinion on the questions which you submitted as follows:

"The recent statutes setting the pay of County Assessors of third class counties removes them from fee schedule and sets a definite amount of annual salary for them and also, provides that they may appoint deputies and clerks.

"Our question is that whether or not such deputies or clerk must be hired with the approval of the County Court and does the approval of the County Court include the right to approve salaries on these individuals.

"In other words, does the County Court still have the right to determine who shall be paid from County funds and who must be paid from the Assessors own funds."

Your question arises under the first two sentences of Section 53.071, Senate Bill No. 1, Third Extra Session, 75th General Assembly, which provides as follows:

"For the performance of their existing statutory duties and for the additional duties set forth in sections 53.081 and 53.091, each county assessor, except in counties of the first

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class having a charter form of government, shall receive an annual salary for his services and shall, subject to the approval of the county court, appoint the additional clerks and deputies that he deems necessary for the prompt and proper discharge of the duties of his office. A portion of each county assessor's salary and of the salaries for his clerks and deputies shall be paid by the state in an amount equal to the sum paid by the state for assessors', clerks', and deputies' compensation in that county in the year 1969, and the remainder of the assessors' salary and the salaries for his clerks and deputies shall be paid by his county. . . ."

Under the language of this statute, it is the assessor who appoints the additional clerks or deputies that he deems necessary for the prompt and proper discharge of the duties of his office; and it is the function of the county court to approve the appointment. In other words, the assessor shall appoint the persons of his selection, which appointments shall be subject to the approval of the county court. The responsibility is thus, in a degree divided, but the initiative, the power to make the selection which the county court shall approve or disapprove, is given to the assessor.

The word "approval" has different meanings, depending upon the context in which it is found and the subject matter to which it is applied. The giving of approval has been said to be a ministerial act. *Better Built Homes & Mortgage Co. v. Nolte*, 249 S.W. 743 (St. L.Ct.App. 1923). On the other hand, the giving of approval has been held to require the exercise of judgment and discretion. *Baynes v. Bank of Caruthersville*, 118 S.W.2d 1051 (Mo. 1938). Under the first interpretation as applied to Section 53.071, the county court would have no power to disapprove the appointment of an additional clerk or deputy selected by the assessor. Under the second interpretation, the county court would have the power to disapprove the appointment of any person selected by the assessor.

In Section 53.071, it appears that the word "approval" is used by the legislature to express a supervisory power placed in the county court as a restraint upon the actions of an elected officer of the county. In these circumstances, the word "approval" must be given the second interpretation; and, therefore, the county court in New Madrid County has the power to approve or disapprove the appointment of additional clerks or deputies by the assessor.

We come now to the question whether the approval of the county court includes the power to fix the salaries of the assessor's clerks

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and deputies. Section 53.095, RSMo 1969, which provided in part that "The county assessor in each county of classes three and four may appoint and fix the compensation of such clerical or stenographic assistants as may be necessary for the efficient performance of the duties of his office. . . ." was repealed when Section 53.071, supra, became effective September 1, 1970. Paragraph 2 of Section 53.071 provides that ". . . Each clerk and deputy appointed by the assessor shall be paid his salary in equal monthly installments by his county. . . ." There is no provision authorizing the assessor to fix the compensation of such clerks and deputies.

Section 50.540, RSMo 1969, provides in pertinent part as follows:

"4. . . . The budget officer shall recommend and the county court shall fix all salaries of employees, other than those established by law, except that no salary for any position shall be fixed at a rate above that fixed by law for the position. . . ."

It therefore follows that deputies and clerks may be employed by the assessor in third class counties only with the approval of the county court and that the salaries of such deputies and clerks shall be fixed by the county court.

Yours very truly,

JOHN C. DANFORTH
Attorney General