

Attorney General of Missouri

JEFFERSON CITY

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August 2, 1978

OPINION LETTER NO. 44

Honorable Larry M. Burditt
Prosecuting Attorney, Benton County
P. O. Box 788
Warsaw, Missouri 65355

Dear Mr. Burditt:

This letter is in response to your question asking as follows:

"The Deputy County Clerk of Benton County has never received the additional \$1,000.00 salary set out in Section 51.450, Subparagraph 3. She has been paid 65 percent of the Clerk's salary as determined in Section 51.450, Paragraph 1(2). The question upon which this opinion is requested is: Is she now entitled to the back pay which she admittedly has not received and if so, for how many years is she entitled to it?"

You also state:

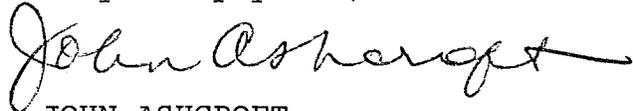
"When I took office in January of 1977, apparently the County Clerk in figuring his budget had come across the provisions of Section 51.450 and realized that his deputy had never been paid the full amount to which she was entitled. He then asked me to compute her salary and discuss it with the County Court. I did this, and I believe for the year 1977 she is obtaining

Honorable Larry M. Burditt

65 percent of the Clerk's salary, as provided for in Section 51.450, plus the \$1000. The County Court asked what it should do about past years, and I told them that I felt they owe her the \$1000.00 for the last five years based upon the statute of limitations found in Section 516.120. I heard nothing further about this until the auditors appeared in our county and the County Clerk asked them what to do. They informed him that an Attorney General's opinion was necessary, and apparently the County Court and the County Clerk and his deputy have agreed to abide by any decision handed down by the Office of the Attorney General."

You have not furnished us with precise facts, therefore we do not assume that there has been an underpayment. However, if there is in fact an underpayment the applicable statute of limitations under Section 516.120, RSMo, would be five years. See our Opinions No. 127-1974 and No. 241-1965, copies enclosed.

Very truly yours,



JOHN ASHCROFT
Attorney General

Enclosures:

- Op. No. 127-1974, Stephenson
- Op. No. 241-1965, Bollinger