

ASSESSORS: Fees to be allowed for taking farm crop census, under Sec. 14030, Art. 102, R. S. Mo. 1939, as amended, Laws of Mo., 1943, page 324.

January 17, 1945



Mr. Harry J. Naylor
Assessor, Shelby County
Clarence, Missouri

Dear Sir:

Reference is made to your letter of December 20, 1944, reading as follows:

"I am writing you for information in regard to the fees allowed Assessors of the various counties of the state for taking the Farm Crop Census.

"Having been appointed by Gov. Donnell as Assessor of Shelby Co. last April, I would like to know if I am entitled to the fee of 10¢ per list, or will my compensation come under the old law of 4¢ per list."

The duties contained in the act originally imposed upon the office of county assessor by statute are found in Laws of 1919, page 110, and the law in identical words has been carried forward through each revision and now appears as Section 14030, R. S. Missouri, 1939. A comparison of the act as originally enacted and as subsequently amended by Laws of 1943, page 324, discloses that no additional duties have been imposed upon the office by the amendment, and that the sole effect of the amendment mentioned is to increase the compensation of the county assessors for discharging their duties.

The validity of the Act of 1919 with respect to the imposition of the duties enumerated therein upon

the county assessor was sustained in the case of State ex rel. Missouri State Board of Agriculture v. Woods, County Assessor, 296 S. W. 381, in which a peremptory writ of mandamus was awarded, compelling the discharge of the duties imposed upon the county assessor. It has, therefore, been judicially established that the duty of taking the farm crop census is a part of the official duties of the county assessor. That being the case, your predecessor in office would have been prohibited from receiving the additional compensation provided by the amendment enacted by the Legislature in 1943. Such prohibition is contained in Article XIV, Section 8, of the Constitution of Missouri, reading as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

This provision has been uniformly construed to prohibit the increase in compensation of a county officer during his term, unless the act providing for additional compensation also adds additional duties to the office. As has heretofore been pointed out, the amendment under consideration does not provide any additional duties, but simply increases the compensation for performing those duties previously placed upon the office.

We, therefore, conclude that your predecessor in office would not have been entitled to the additional compensation, and this, in turn, presents the question as to whether your rights as his successor are any greater. The opinion in the case of Thornberry v. City of Campbell, 274 S. W. 847, we believe, is controlling. We quote:

" * * * But the term is fixed and the statute preventing a change in compensation is not, in our opinion, personal to the then occupant of the office, but applies to any subsequent holder of the office during the same term. Each official term stands by itself. The constitutional

provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a term by statute only, and in no wise refers to the individual who may incidentally happen to be the incumbent for more than one term.' State ex rel. v. Farmer, 271 Mo. 306, loc. cit. 314, 196 S. W. 1106, 1109; State ex inf. v. Williams, 222 Mo. 268, 121 S. W. 64, 17 Ann. Cas. 1006.

"In 22 R. C. L. at page 552, we find this language:

"It has been ruled that the resignation or the removal of an officer during his term and the election or appointment of a successor does not divide the term nor create a new and distinct one; and that in such a case the successor is filling out his predecessor's term."

* * * * *

"In Storke v. Goux, 129 Cal. 526, 62 P. 68, the Supreme Court of California decided that limitations which by their terms prevent a change of compensation during the term of office of an incumbent are effective as to one appointed to fill a vacancy. In the Storke Case the party elected to the office died, and between that time and the date of the appointment of plaintiff in that suit a law was passed increasing the salary accruing to the office. In holding the new officer was not entitled to the increase, the court had for consideration a constitutional provision similar to our statute here invoked."

CONCLUSION

In the premises, it is, therefore, the opinion of this office that the amendment to Section 14030, R. S.

Mr. Harry J. Naylor

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Missouri, 1939, found in Laws of Missouri, 1943, page 324, is inoperative to increase the compensation of the incumbents of the respective offices of county assessor and persons appointed to fill out their unexpired terms, and that the compensation of such county assessors and their successors for the term ending June 1, 1945, is fixed by the provisions of Section 14030, as found in Revised Statutes of Missouri, 1939, without regard to such subsequent amendment.

Respectfully submitted

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APPROVED:

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