

COUNTY OFFICERS) The compensation of a county officer cannot
) be increased during his term of office.

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Mr. R. E. Moulthrop
Prosecuting Attorney
Harrison County
Bethany, Missouri

Dear Sir:

We are in receipt of your recent request for an official opinion, which request is as follows:

"Harrison County is a county of the third class and has the township form of county government. The Treasurer is also ex-officio Collector, and through the year 1950, and until this date, has collected the sum of 2% on all corporation taxes, back taxes, licenses, merchant's tax and tax on railroads. Under Section 13,993, Laws of 1949, such commission was properly 3%. Is the County Court now authorized to pay such ex-officio Collector the amount to which the office would have been entitled, namely an additional 1%. Also, does such provision constitute an increase and prevent thereof to the present ex-officio Collector during such officer's current term."

Section 54.320, RSMo 1949, relating to your problem, reads as follows:

"The county treasurer in counties of the third class adopting township organization shall be allowed a salary of not less than one hundred dollars per month by the county

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court to be paid as at present provided by law; the ex officio collector for collecting and paying over the same shall be allowed a commission of three per cent on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and two per cent on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes; provided, he shall receive nothing for paying over money to his successor in office."

This statute replaces Section 13993, R. S. Mo. 1939, which was amended in 1949, Laws of Missouri, 1949, page 626. The change made at that time simply increased the commission allowed the county treasurer (ex officio collector) from two per cent to three per cent for collecting and paying over the tax items enumerated in your letter. The act was approved April 26, 1949.

Section 13 of Article VII of the Constitution of Missouri, reads as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

In substance this is the same as Section 8 of Article XIV of the Constitution of 1875. It applies to all officers who are elected or appointed for a definite term of office and whose compensation has been fixed by law. State ex rel. Stevenson v. Smith, 87 Mo. 158; Callaway County v. Henderson, 119 Mo. 32, 24 S.W. 437. The term "compensation" as used in this section is broad enough to include salary, commissions, fees and other pay for public service. State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106.

In State ex rel. Selleck v. Gordon, 254 Mo. 471, 162 S.W. 629, the Supreme Court of Missouri held that a sheriff was not entitled to fees authorized by the legislature after he had begun his term of office. In the course of that opinion the court said:

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"The only items of costs contained in said fee bill which are attacked on the ground that they are illegal and not properly taxable as items of cost in the cause are the two items of \$11 and \$12.25, claimed by sheriff Roland as fees for mileage in subpoenaing witnesses. Sheriff Roland's four-year term of office began about January 1, 1909. The statute authorizing sheriffs to receive fees for mileage in subpoenaing witnesses in criminal cases was first enacted in 1909 and after Sheriff Roland had begun his term of office (Laws 1909, p. 505.) The sheriff was therefore not entitled to these fees for the reason that, if allowed, they would amount to an increase of his fees during his term of office."

It is evident that the act of 1949, increasing from two per cent to three per cent the commission of the county treasurer (ex-officio collector) in third class counties on certain tax collections, cannot be applied until the end of the current term of said officers, at which time the act will become effective.

CONCLUSION

It is the opinion of this department that the county court of Harrison County is not authorized to pay the county treasurer (ex officio collector) the additional one per cent for collecting and paying over corporation taxes, back taxes, licenses, merchants' tax and tax on railroads. His compensation cannot be increased during his present term of office.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General