

TOWNSHIPS:
OFFICERS:
PUBLIC OFFICERS:
SALARY:
COMPENSATION OF OFFICERS:

Township trustee and members of the township board elected before the effective date of Section 65.230 RS Mo 1955 Cum.Supp., may not receive the increased compensation authorized therein during their present term of office. Officers whose terms began after said Act took effect may receive the increased compensation.



May 24, 1956

Honorable Robert Lamar
Prosecuting Attorney
Texas County
Cabool, Missouri

Dear Sir:

You recently requested an official opinion of this office concerning the following matter:

"Texas County is a county of the third class, and is one of the remaining counties in this State under township organization. I have been asked several times by township officers for an interpretation of Section 65.230 V.A.M.S. as amended by H.B. 353, Laws of 1955.

"This amendment took effect August 29, 1955. The township clerks were elected in September, 1955, a few days after the passage of this Act. The township trustees and other members of the township board were elected in the preceding April, and were already serving at the time this amending act took effect. The amended act did not assign any additional duties to the township officers.

"Query:

"Does the township clerk who was elected for a term beginning after the amending act took effect draw the increased pay; do the trustees and other members of the township board who were serving as such when the amending act took effect draw the increased pay, or is that amending act effective as to them during the term they were serving when the act took effect. "

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As to the township clerk whose term began in September, 1955, there is no problem since Section 65.230 RSMo 1955 Cum.Supp. became effective August 29, 1955. The increased compensation provided therein was in effect at the time of the commencing of the clerk's term of office, and there can be no question of increase of compensation during his term so as to conflict with the provisions of Article VII, Section 13 of the Missouri Constitution of 1945. That section 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."

As to the township trustee and members of the township board, who were in office at the time said section became effective, the problem is more difficult. The Constitution specifically prohibits an increase in the compensation of "state, county and municipal officers." Thus, if these township officers come within that classification, they may not receive the additional compensation during their present term of office. On the other hand, if they do not constitute such state, county or municipal officers, they may receive such increased compensation. See State ex rel. Webb v. Pigg, (Sup.) 249 SW2d 435. While this case was concerned primarily with whether or not the officer there in question (the clerk of the Springfield Court of Appeals) was a state officer within the above provision of the constitution, the discussion contained in that opinion throws considerable light upon the present problem. It was there held that where an officer has been delegated some substantial part of the sovereign power of the state, to be independently exercised with some continuity and without control of a superior power other than the law, he comes within the constitutional definition and is a state or public officer. The Court went on to say, l.c. 441:

"In recent opinions of this court special emphasis has been placed upon whether the particular individual in question performs his duties independently and without control of a superior power other than the law, that is, whether he is endowed by law with the power and authority to use his own judgment and discretion in discharging the sovereign functions of government which have been vested in him by statute and which functions are to be exercised by him for the benefit of the public. A careful review of all the statutory

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and constitutional provisions relied upon in connection with the application of the established test to determine whether relator is a 'state officer' or a 'public officer' within the meaning of Section 13, Article VII, Constitution of Missouri 1945, convinces us that relator is not such an officer."

When the provisions of Chapter 65 RSMo 1949 are examined, it appears that the township trustee is a member of the township board and that as such it is the duty of the trustee and the other members of the board to audit the accounts of the other officers of the township (except the assessor), and likewise to audit demands against the township. Further, their duty is to levy taxes for township road and bridge purposes and to perform all other duties provided by statute. The trustee receives and pays out the money of the township on order of the township board, keeps the accounts, and generally conducts the financial business of the township.

From these statutes, it appears that the trustee, together with the other members of the township board, is, in effect, the executive head of the township, levying and collecting taxes and receiving and expending the moneys of the township.

In the case of State ex rel. Kinder v. Little River Drainage District, 291 Mo. 267, 236 SW 848, the Supreme Court held that, under the provisions of the Missouri Constitution of 1875 exempting from taxation the property of "counties and other municipal corporations," an organized township was a municipal corporation and this being so, it would appear that the trustee and other members of the township board would be municipal officers.

CONCLUSION.

It is therefore, on the basis of the foregoing, the conclusion of this office that the township trustee and the other members of the township board come within the prohibition contained in Article VII, Section 13 of the Missouri Constitution, and that their compensation may not be increased during their respective terms of office and, since they were in office on August 29, 1955, the effective date of Section 65.230 RSMo 1955 Cum.Supp., they may not receive during their present term of office the increased compensation therein provided. As to the township clerk, whose term of office began after the effective date of said section, he may receive the increased compensation therein provided.

Honorable Robert Lamar

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Very truly yours,

John M. Dalton
Attorney General

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