

CIRCUIT CLERKS: With respect to House Bill 119 of the 75th
COMMON PLEAS COURTS: General Assembly relating to the total
RECORDERS OF DEEDS: compensation formula for the offices of
COMPENSATION: recorder of deeds, circuit clerks, circuit
FEES: clerk-ex officio recorder of deeds, in cer-
LEGISLATION: tain counties, and clerks of the common
AUDITOR: pleas courts, (1) The present full compen-
sation of the recorder of deeds in class
two counties can be readily ascertained; and if the compensation
provided by House Bill 119 exceeds that provided by statutes
applicable before the enactment of House Bill 119, such new com-
pensation cannot be paid during the present term of office. (2)
Circuit clerks of class two, three and four counties and the
recorder of deeds in counties of the third class and clerks of
the courts of common pleas will not receive the compensation pro-
vided by House Bill 119 during their present term if the compen-
sation of such officers provided for by such bill is greater than
the present statutory salaries of such officers. The additional
compensation provided for the clerk of the Hannibal Court of
Common Pleas under the provisions of Section 483.455 of House Bill
No. 74 is also considered in computing his present salary.

OPINION NO. 399

October 9, 1969

Honorable William S. Brandom
Prosecuting Attorney
Clay County Courthouse
Liberty, Missouri 64068



Dear Mr. Brandom:

This is in response to an opinion request from your office concerning the effective date of House Bill No. 119 of the 75th General Assembly.

House Bill No. 119 repeals various sections relative to the duties and compensation of circuit clerks, circuit clerks-ex officio recorder of deeds, recorder of deeds in certain counties and clerks of the courts of common pleas and enacts in lieu thereof certain sections relative to the duties of such officers and establishes a pay formula for such individuals based upon population and assessed valuation.

The question revolves about the interpretation of the constitutional provisions contained in Section 13 of Article VII of the Missouri Constitution which states:

"The compensation of state, county and municipal officers shall not be increased

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during the term of office; nor shall the term of any officer be extended."

In State ex rel Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106 (1917), the Supreme Court assumed, but did not hold expressly that the circuit clerk was an officer within the meaning of this statute. This assumption was noted in State ex rel Webb v. Pigg, 363 Mo. 133, 249 S.W.2d 435 (1952), a case involving a clerk of the court of appeals. In the latter case, the court noted that the circuit clerk had duties involving more discretion than the clerk of the court of appeals; and although they held that the clerk of the court of appeals is not a state officer within the meaning of this section, the holding therein does not declare the status of the clerk of the circuit court.

It is our view that the officers herein mentioned are officers within the meaning of Section 13 of Article VII of the Constitution.

With respect to the effective date of laws generally, Section 29, Article III of the Constitution provides:

"No law passed by the general assembly shall take effect until ninety days after the adjournment of the session at which it was enacted, except an appropriation act or in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly shall otherwise direct by a two-thirds vote of the members elected to each house, taken by yeas and nays; provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess."

Section 1.130, RSMo 1959, provides:

"A law passed by the general assembly takes effect ninety days after the adjournment of the session at which it is enacted; but if the general assembly recesses for thirty days or more, it may prescribe by joint resolution that laws previously passed and not effective take effect ninety days from the beginning of the recess, subject to the following exceptions:

"(1). A law necessary for the immediate preservation of the public peace, health or

safety, which emergency is expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house the vote to be taken by yeas and nays, and entered on the journal, or a law making an appropriation for the current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, takes effect as of the hour and minute of its approval by the governor; which hour and minute may be indorsed by the governor on the bill at the time of its approval;

"(2). In case the general assembly, as to a law not of the character herein specified, provides that the law takes effect on a date in the future subsequent to the expiration of the period of ninety days herein mentioned the law takes effect on the date thus fixed by the general assembly;

"(3). In case the general assembly provides that any law takes effect as provided in subdivision (1) of this section, the general assembly may provide in such law that the operative date of the law or parts of the law takes effect on a date subsequent to the effective date of the law."

We note that House Bill 119 contains no emergency provision nor does it specifically declare an effective date. It will therefore become effective on October 13, 1969. If it does, in fact, provide an increase in compensation for any officers during their term of office to the extent that the particular compensation of the officers involved is increased by the provisions of the act, it will become effective as to such officers upon the end of the present term of such officers.

At present, the mode of compensation to these officers varies. The present salary of the recorder of deeds in class two counties is the total compensation of such officer and therefore may be compared with compensation such officer will receive under the Bill. Section 59.225, RSMo Supp. 1967. However, with respect to the other officers, we note that the fixed compensation that they presently receive is not their present full compensation. That is, the circuit clerks of class two, three and four counties receive in addition to fixed allowances all fees earned in cases of change of venue from other counties. Section 483.560, RSMo 1959;

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Section 483.315, RSMo 1959; Section 483.330, RSMo Supp. 1967; Section 483.335, RSMo Supp. 1967; Section 483.370, RSMo 1959. In addition, the circuit clerk-ex officio recorder of deeds in counties of the third class are presently permitted to retain non-accountable fees for services performed with respect to the lists of veterans and copies of discharges. Section 59.490, RSMo Supp. 1967.

It further appears with respect to the clerks of the Courts of Common Pleas at Hannibal and Cape Girardeau that said clerks are entitled to fixed allowances under the provisions of Sections 483.425, RSMo Supp. 1967, and 483.461, RSMo Supp. 1967, and under the provisions of Section 483.455 of House Bill No. 74 of the 75th General Assembly (Opinion No. ~~434~~, 1969, Holman) effective October 13, 1969, relating to additional compensation for the clerk of the Hannibal Court of Common Pleas. In addition, such clerks are entitled to retain fees earned in cases of change of venue for the reason that the term "circuit court" is intended generally to include "courts of common pleas." Section 1.110, RSMo 1959. Section 483.560, RSMo 1959, which pertains generally to counties of classes two, three and four excepts fees collected in cases of change of venue from other counties by circuit clerks from those fees payable monthly into the county treasury. This section is, therefore, applicable to fees of clerks of the courts of common pleas earned in cases of change of venue to such courts.

Further, Section 59.490, RSMo Supp. 1967, presently permits the recorder of counties of the third class to collect a non-accountable fee for services performed with respect to the list of veterans and the copies of discharges.

The present compensation for such officers who are thus now entitled to receive non-accountable fees in addition to fixed allowances is not readily ascertainable.

We conclude that the present compensation for the recorder of deeds in class two counties is fixed and certain; and whether or not the compensation of any particular recorder in such class county is increased by House Bill 119, is solely a matter of mathematical calculation.

Insofar as concerns the effective date of the new total compensation schedule for third class county recorders, circuit clerks of the class two, three and four counties and the clerks of the common pleas courts, it is our view that any increase over the present salary provisions, including the compensation provided for the clerk of the Hannibal Court of Common Pleas pursuant to Section 483.455 of House Bill No. 74, disregarding non-accountable fees, is not effective until the end of the term of office of such officers. We feel that this view is supported by the holding of the Supreme Court of Missouri in Folk vs. City of St.

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Louis, 157 S.W. 71, at l.c. 76 (1913):

" . . . the mere discontinuance of the right to collect uncertain fees cannot afford a satisfactory reason for raising a specific salary payable out of the public treasury. To do so would be to fritter away the salutary provisions of section 8, art. 14, of the Constitution of Missouri by pretending to take away from an officer fees which he had not, and might never earn, and give him a block of solid cash out of the public treasury in lieu thereof."

CONCLUSION

It is therefore the opinion of this office with respect to House Bill 119 of the 75th General Assembly relating to the total compensation formula for the offices of recorder of deeds, circuit clerks, circuit clerk-ex officio recorder of deeds, in certain counties, and clerks of the common pleas courts that:

(1) The present full compensation of the recorder of deeds in class two counties can be readily ascertained; and if the compensation provided by House Bill 119 exceeds that provided by statutes applicable before the enactment of House Bill 119, such new compensation cannot be paid during the present term of office.

(2) Circuit clerks of class two, three and four counties and the recorder of deeds in counties of the third class and clerks of the courts of common pleas will not receive the compensation provided by House Bill 119 during their present term if the compensation of such officers provided for by such bill is greater than the present statutory salaries of such officers. The additional compensation provided for the clerk of the Hannibal Court of Common Pleas under the provisions of Section 483.455 of House Bill No. 74 is also considered in computing his present salary.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General