

COMPENSATION: County assessors may receive additional
COUNTY ASSESSORS: compensation for the duties imposed on
them under Sections 53.073 and 53.074
(Senate Bill No. 373, 77th General Assembly, Second Regular Ses-
sion) for the year 1974 but that such additional compensation is
annual compensation payable only on a prorated basis from the ef-
fective date of the act, August 13, 1974, to the end of the year.

OPINION NO. 313

October 23, 1974

Honorable John W. Briscoe
Prosecuting Attorney
Ralls County
429 South Main Street
New London, Missouri 63459



Dear Mr. Briscoe:

This opinion is in response to your question concerning Senate Bill No. 373, 77th General Assembly, Second Regular Session, Sections 53.073 and 53.074, which became effective August 13, 1974.

Your question is as follows:

"Section 53.073 and Section 53.074 of the Missouri Revised Statutes were passed by the General Assembly in the recent session and became effective August 13, 1974, at 12:01 A.M. Section 53.073 provides certain additional duties for county assessors, regarding the providing of a list of real property transfers occurring between January 1 and September 1 of a given year to the county collector of revenue. Section 53.074 provides additional compensation to the county assessors for the duties imposed by Section 53.073. The extra duties imposed by Section 53.073 will be performed between September 1 and October 1. The list must be compiled during the first eight (8) months of the year. My question is: Does the county assessor receive the entire additional annual compensation for 1974, since the extra duties involve work covering the time beginning January 1, 1974? If the answer to the first question is affirmative, do the assessors then

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receive the additional annual compensation, prorated over the four (4) months and nineteen (19) days of the year after the bill became effective?"

Section 53.073, as amended, provides:

"Each county assessor, except in counties of the first class and counties of the second class having an assessed valuation in excess of three hundred million dollars as of January 1, 1974, shall on or before October first of each year furnish to the county collector of the revenue of his county a list of all real property transfers occurring after January first of that year and before September first of that year. The list shall contain a description of the property transferred and the name of each grantor and grantee and their addresses if known."

Section 53.074, as amended, provides:

"As compensation for the extra duties imposed by section 53.073, each assessor shall receive, in addition to all other compensation provided by law, a sum to be paid out of the county treasury to be computed as follows:

(1) In all counties with an assessed valuation of less than thirty million dollars, one thousand dollars;

(2) In all counties with an assessed valuation of thirty million dollars but less than seventy million dollars, one thousand five hundred dollars;

(3) In all counties with an assessed valuation of seventy million dollars but less than one hundred million dollars; two thousand dollars;

(4) In all counties with an assessed valuation of one hundred million dollars but less than one hundred fifty million dollars, two thousand five hundred dollars;

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(5) In all counties with an assessed valuation of one hundred fifty million dollars but less than two hundred million dollars, three thousand dollars;

(6) In all counties with an assessed valuation of two hundred million dollars but less than two hundred fifty million dollars, three thousand five hundred dollars;

(7) In all counties with an assessed valuation of two hundred fifty million dollars but less than three hundred million dollars, four thousand dollars;

(8) In all counties with an assessed valuation of three hundred million dollars but less than three hundred fifty million dollars, four thousand five hundred dollars;

(9) In all counties with an assessed valuation of three hundred fifty million dollars or more, five thousand dollars."

Article VII, Section 13 of the Constitution of Missouri, provides:

"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."

However, when new duties are imposed upon officers, additional compensation is allowable. Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo. 1956). Therefore, the assessor is entitled to additional compensation for such new duties after the effective date of the act.

The difficult question, however, is whether the entire amount of such compensation is to be prorated from the effective date of the act to the end of the year or whether the increase in compensation is to be considered as an increase in the annual compensation of the assessor and prorated as annual compensation from the effective date of the act to the end of the year.

We find no cases squarely in point. However, the Supreme Court of Missouri held in State ex rel. Vossbrink v. Carpenter,

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388 S.W.2d 823 (Mo. Banc 1965) that an officer is entitled to the emoluments of his office even though he does not perform his duties. This appears to be a well-settled rule as indicated in 22A Missouri Digest Officers p. 72. Under this reasoning an officer is entitled to his statutory compensation not on the basis of whether he actually performs the functions required of him by statute but because the legislature has provided that he is entitled to such compensation. With this case in mind, we reach the conclusion that although the duties required of the assessor must be performed before October 1 of the year and, as a practical matter, cannot be completed before September 1 such duties are essentially no different than other duties which the assessor must perform for which he is paid annual compensation in monthly installments. Section 50.330, RSMo.

We therefore conclude that the increase in compensation is an increase in annual compensation. Because we view the increase as an increase in annual compensation, it is our view that the increase may be paid only for that portion of the year, prorated, from the effective date of the act until the end of the year. For instance, an assessor in a county with an assessment between thirty million and seventy million would receive payment of one hundred twenty-five dollars per month for September, October, November, and December and 19/31 of one hundred twenty-five dollars for the month of August, 1974.

In reaching this conclusion we have considered several practical factors which should be noted. It is not unusual for officers to have workload peaks throughout the year often occasioned by statutory deadlines, and as we have noted, the courts are not prone to view an officer's right to compensation on a piecework basis. In the present situation in future years, it seems apparent that the work required could begin any time after January 1 and continue to October 1. If the compensation is to be considered on a piecework basis, it appears clear that there would be substantial difficulty in determining the rights of such officers and their successors. Assessors assume office on the first day of September after their election. Section 53.010, RSMo. While 1974 is not a year involving the end of an assessor's term, it seems that any year involving a change of officers, whether because of the end of a term or otherwise, would require a determination of the amount of compensation the respective officers are entitled to under these sections. For example, if an officer took office for the first time on September 1, the work could not have been entirely completed although presumably his predecessor could have already completed all except the last entries and delivery to the collector.

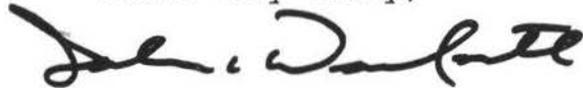
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Likewise, if an officer completed and delivered the list before the October 1 deadline and left office for some reason, it is clear that his successor would have no duties to perform or that he could perform in this respect until the first day of January following. In each case hypothesized above and in others that could arise, the difficulties of proportioning the compensation on the basis of the work completed appears obvious. We do not believe that such results were contemplated by the legislature.

CONCLUSION

It is the opinion of this office that county assessors may receive additional compensation for the duties imposed on them under Sections 53.073 and 53.074 (Senate Bill No. 373, 77th General Assembly, Second Regular Session) for the year 1974 but that such additional compensation is annual compensation payable only on a prorated basis from the effective date of the act, August 13, 1974, to the end of the year.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General