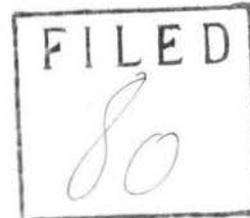


COUNTY JUDGES: Laws 1933, re population determining salaries.
Does not effect present judges holding office.

July 15, 1933

7-25



27.02
" "

Hon. Henry C. Salveter
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Mr. Salveter:

This is to acknowledge your letter of June 13, 1933,
which is as follows:

"There is much rumor prevalent these days concerning the salary of the Judges of our County Court. Pettis County has an actual census population of between 34,000 and 35,000.

At the last November, 1932, election there were over 15,000 votes cast for many of the major offices. Under Sec. 11808 of R. S. Mo. 1929, this places Pettis County at a population of over 75,000 inhabitants (this being what is commonly called the multiplication method of ascertaining the population). Under Sec. 2092 of the laws of 1931, page 190, counties having a population of 75,000 inhabitants and less than 90,000 inhabitants, the County judges receive an annual salary of \$2,500.00. On this basis, Pettis County having a population of over 75,000 inhabitants and less than 90,000 inhabitants, our county judges have been drawing an annual salary of \$2,500.00, as they are now doing.

Our representative, E. W. Couey, has made several public talks that the Judges of the County Court in Pettis County were entitled to only \$5.00 per day, by reason of the bill which passed the Legislature at the 1933 session, relating to the salary of County Judges. I have not as yet received a copy of that bill, but I am informed that it places the compensation of County Judges at \$5.00 per day, and expressly provides that the method of ascertaining population shall be

determined solely and only by the last decennial census of the United States. Judge Couey's public utterances are that this bill relating to the salary of County Judges passed at the last session of legislature becomes effective 90 days after the adjournment of the legislature, and from that date on the County Judges in Pettis County will be entitled to only \$5.00 per day. Section 33 under Article 6 of the Constitution of Missouri provides, "The judges of the Supreme, appellate and Circuit Courts, and all of the other courts of record receiving a salary, shall, at stated times, receive such compensation for their services as his or may be prescribed by law; but it shall not be increased or diminished during the period for which they were elected."

I have no personal interest in this matter whatever other than to follow the law, and to advise our County Court as to what I understand the law to be. It appears to me that Section 33, Art. 6, of the Constitution of Mo. expressly provides that the salary of all judges of courts of record shall not be increased or diminished during the period for which they were elected. That being true, it appears to me that the judges of the County Court in Pettis County are entitled under the law to continue to receive their annual salary of \$2,500.00 per year. It further would appear to me that it is unconstitutional for the legislature to design some other scheme of determining the basis of compensation, if the other method devised by the legislature in reality affects the existing salary of the county judges.

I would indeed appreciate your interpretation of the situation, as I have advised the county judges as to my interpretation of the law, but I have also informed them that I would secure your opinion in addition to my own."

Section 2073 R. S. No. 1929, provides in part as follows:

"At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge," * * * * *
and every four years thereafter, the presiding judge of said court shall be elected." * * * *

The 1933 Legislature amended Section 2092 Laws No. 1931, p.190, and enacted a new section in lieu thereof. This new section only changed the annual salary of judges of the county court in counties of three hundred thousand inhabitants or more from six thousand dollars to four thousand dollars and added this provision:

"And no mileage shall be paid for any special or adjourned term."

This law was approved May 1, 1933, and becomes effective July 24, 1933.

The law as amended in 1933 is the same in regard to the proposition here involved as of 1931 section. Both provide in part the following:

"In all counties of this state now or hereafter having seventy-five thousand inhabitants and less than ninety thousand inhabitants, the judges of the county court shall receive an annual salary of twenty-five hundred dollars." * * * *

And further:

"* * * In all counties of this state now or hereafter having less than seventy-five thousand inhabitants, the judges of the county court shall receive for their services the sum of five dollars per day for each day necessarily engaged in holding court." * * * *

The 1933 Legislature, Laws Mo. 1933, p. 209, also enacted this provision:

"Section 1. Amending Article 5, Chapter 9, by adding new section.--That Article 5, Chapter 9, Revised Statutes of Missouri, 1929, be and the same is hereby amended by adding thereto a new section to be numbered and known as 'Section 2092A,' which said new section shall read as follows:

Sec. 2092a. Last decennial census to determine population.--That the number of inhabitants of any county for the purpose of the above section 2092 shall be ascertained by the last decennial census of the United States."

This section likewise carries no emergency clause and is effective after July 24, 1933.

It will be noted that the purpose of the last section (2092a) changed the method of computing the population for salaries of county judges.

Section 11808 R. S. Mo. 1929, reads as follows:

"For the purpose of determining the population of any county in this state, as a basis for ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants, the highest number of votes cast at the last previous general election, whether heretofore or hereafter held in such county, for any office, shall be multiplied by five, and the result shall be considered and held for the purpose aforesaid as the true population of such county."

You will note that before Section 2092A was enacted that the population for the purpose of ascertaining salaries was by the multiplication method.

Section 33, Article 6, p. 115, of the Constitution of Missouri reads as follows:

"The judges of the Supreme, Appellate and Circuit Courts, and of all other courts of record receiving a salary, shall, at stated times, receive such compensation for their services as is or may be prescribed by law; but it shall not be increased or diminished during the period for which they were elected."

Section 35 of the same Article of the Constitution reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 1826 R. S. Mo. 1929, provides as follows:

"The supreme court of the state of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

In the case of *Cunningham v. Current River Railroad Company*, 165 Mo. 370, l.c. 377, the Court in its opinion held:

"* * * The compensation mentioned in the Constitution means compensation paid by the State, or some subdivision thereof, in the way of an increase of salary or compensation, which can not be increased by legislation during the period for which the judge is elected, but does not mean that he may not be paid for extra services and expenses incurred in the performance thereof, even out of the State treasury." * * *

