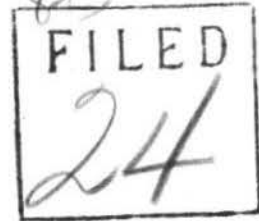


DEPUTY AND :
ASSISTANT CIR- :
CUIT CLERKS. :

Their appointment and salaries?
under House Bill No. 177.

August 11th, 1937.



Mr. Elvin S. Douglas,
Prosecuting Attorney,
Bolivar, Missouri.

Dear Mr. Douglas:

This is to acknowledge receipt of your letter of July 2nd, in which your request and opinion of this department relative to House Bill No. 177 passed by the 59th General Assembly pertaining to the appointment and salaries of deputy and assistant circuit court clerks.

Your letter is as follows:

"I am writing you in regard to the recently passed legislation in regard to the Circuit Clerk's offices. We do not have a copy of the law here, but it is the common understanding that the law purports to be effective immediately.

Do the provisions of the law relating to the appointment of the deputies and the fixing of their salaries by the Circuit Judge become effective immediately and apply to the present officers? Is it necessary for the Judge to approve the appointment of deputies and fix their salaries now?

Is it the opinion of your office that this act can validly affect the officers during their present terms?

Judge Skinker of our judicial circuit has planned to be out of the State on a two months vacation after next Thursday, July 10th, and he would like to perform whatever duties he has in accordance with the new legislation before he leaves for the summer."

Under the provision of Section 11812, 1933 Session Act at page 371, deputy and assistant circuit court clerks were appointed by the circuit court clerks with the approval of the county courts, which said courts fixed the compensation of such deputies or assistants, with a limitation, for such time as they desired to designate.

The Clerks could, under said section, discharge such officials at any time and the courts could, at any time, modify or rescind their order permitting such appointment by the clerks and reduce the compensation theretofore fixed.

House Bill No. 177, Section 11812 provides for the approval and fixing of the salaries of the deputy and assistant circuit court clerks by the circuit court, said Section 11812 being as follows:

"Every Clerk of a Circuit Court shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the Judge or Judges of the Circuit Courts, as such Judge or Judges shall deem necessary for the prompt and proper discharge of the duties of his office. The Judge or Judges of the Circuit Court, in its order permitting the Clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which said order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the County Clerk. The Clerk of the Circuit Court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the Circuit Court may, at any time, modify or rescind its order permitting an appointment to be made."

In the case State ex. rel vs Gordon 238 Mo. 168, in passing on the question as to whether appointive officers, with no certain fixed term of office, come within the inhibition of Article 14, Section 8 of the Constitution of Missouri, the court said:

"Attending to the main question, its answer finds itself in the very words and intentment of the Constitution. Those words are common to many Constitutions. They were carefully chosen, have been frequently under judicial scrutiny, and have received a definite judicial construction, as will be seen further on. Observe, the Constitution does not say that the salary of no officer can be increased at any time. It says such salary shall not be increas-

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ed during a certain time or while a certain thing lasts. What is that time or thing? It is "his term of office." Therefore the officer in mind is not any officer, but is one of a definite kind, one who has an official term. If any officer has no "term of office" he does not measure up to the constitutional subject-matter and is not within the words or intendment of the Constitution.

In the enclosed opinion written by Mr. Covell R. Hewitt, Assistant Attorney General, the emergency clause of House Bill No. 177 was held to be unconstitutional.

CONCLUSION

It is, therefore, the opinion of this department that House Bill No. 177 does not go into force and effect until September 6th and that thereafter appointments of deputies and assistant circuit court clerks must have the approval of the Judge or Judges of the Circuit Courts and that the compensations of said officials shall be fixed by said Judge or Judges.

Your second question is answered by an opinion written by Mr. Covell R. Hewitt, Assistant Attorney General, on August 6th, a copy of which said opinion I am enclosing herein.

Yours very truly,

S. V. MEDLING
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

SVM:LB