

JURY COMMISSIONERS: ) Jury commissioners entitled to have  
in Counties from ) salary restored under Senate Bill No. 12.  
400,000 to 800,000 )  
inhabitants. )  
SALARY & COMPENSATION: )

June 7, 1937.

6-10



Honorable John B. Pew  
County Counselor  
Jackson County  
Kansas City, Missouri

Dear Mr. Pew:

This is to acknowledge your letter of May 17th in which you request the opinion of this Department on the questions therein submitted. Your letter is as follows:

"On March 5, 1937, the Governor approved Senate Bill #12, which provides for an increase in the salary of jury commissioners in Jackson County, from \$1500. to \$3000. per year. The 10 circuit judges of Jackson County are ex officio members of the jury commission. In fact, the creation of this commission in the first instance was probably a method of raising the salaries of circuit judges. The salary of a commissioner was fixed at one time at \$3000. and I think about 4 years ago was reduced to \$1500. but now Senate Bill #12 amends the law by merely increasing the pay and no added duties are assigned to the commission and no change in the law is made other than the increase in salary.

"Some of our judges have just been elected for 6 years. The terms of some will expire in less than 2 years and they will probably be re-elected. It is the desire of the county court to meet this increase in pay.

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"We are informed that the circuit judges, who constitute this board, insist that a membership on this board is not a public office as contemplated by the constitution. The members are not nominated and elected to this office and are not appointed. It is a position incident to the office of circuit judge. As a matter of precaution, the county court today requested me to ask you if, in your opinion, we could safely meet this payroll."

The question, as we understand it from your letter, is whether or not the members of the present Board of Jury Commissioners of Jackson County are entitled to an increase in compensation of \$1500.00 each per annum, as provided in Senate Bill No. 12 passed by the 59th General Assembly and signed by the Governor March 5, 1937.

The Legislature in 1905 created a Board of Jury Commissioners for all counties of the State having a population of 200,000 inhabitants and not more than 400,000 inhabitants and designated the circuit judges of such counties as a board of jury commissioners. In its original enactment each member of the Board of Jury Commissioners received \$1500.00 per annum for his services as jury commissioner. This law was carried through the different revisions of the Statutes of Missouri and was Section 8795, of the Revised Statutes of 1929.

The 1931 General Assembly repealed Section 8795 and created a Board of Jury Commissioners for each county in this State having not less than 400,000 nor more than 800,000 inhabitants and re-enacted a new section which increased the compensation of the jury commissioners in said counties to \$3000.00 per annum. In each of these acts the circuit judges of said counties, including the judges of the court having jurisdiction in felony cases, constitute the board of jury commissioners. Jackson County falls within the provided classifications. The 1930 United States Census shows that Jackson County had a population of 470,454 (1935-36, Blue Book, page 434) and falls within the classification of the

1931 Act by which act the salary of each member of the Board was fixed at \$3000.00 per annum.

Section 8795, R. S. Mo. 1929, as amended by Laws of Missouri, 1931, at page 257, was repealed and a new section enacted (Laws of Missouri, 1933, page 281) and the compensation of each member of said Board for his services as jury commissioner was reduced to \$1500.00 per annum.

Senate Bill No. 12, passed by the Legislature and approved by the Governor March 5, 1937, amends the 1933 law by striking out the words "fifteen hundred" and inserting in lieu thereof the words "Three thousand," thereby restoring the compensation to \$3000.00 per annum.

The creation of the additional duties and the fixing of the compensation of the jury commissioners did not affect the salaries of the judges of the Circuit Court of Jackson County for the reason that it was compensation solely as members of the Board of Jury Commissioners. The General Assembly has full power and authority to increase or decrease the compensation of public officials unless restricted in some way by the Constitution. There are two sections of our Constitution which should be considered in this opinion:

Section 8, Article XIV, which provides:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; \* \*"

and Section 33, Article VI, which provides:

"The judges of the Supreme, Appellate and Circuit Courts, and 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."

Unless the increase of the compensation allowed each member of the Board of Jury Commissioners by Senate Bill No. 12 is prohibited by the above sections of the Constitution, each

of the members of this board is entitled to the \$1500.00 increase provided by Senate Bill No. 12.

The judges of the Circuit Court of Jackson County are elected at the various general state and presidential elections, so that the personnel is constantly changing. We do not think that the jury commissioners hold their offices ex officio, but under the statute creating said board the judges are designated as "Board of Jury Commissioners." Since the members of the Board of Jury Commissioners do not receive their compensation as Judges of the Circuit Court of Jackson County, but for additional duties given them by the statutes, not incidental to their duties as judges, and thereby Section 33, Article VI of the Constitution, quoted above, does not affect in any way the compensation given the members of the Board for the reason that this section states that the salary of the judges, which means as judges, shall not be increased or diminished during the period for which they were elected, and therefore constitutes no inhibition against them as members of the Board of Jury Commissioners.

It is well settled in Missouri and elsewhere that where a public official is given additional duties to perform, for which a compensation is given for the performance of these additional duties, he is entitled to said increase, notwithstanding the constitutional provision may provide that his compensation or salary may not be increased during his term of office. State ex rel. v. Sheehan, 269 Mo., 1. c. 429, and cases cited; The State ex rel. McGrath v. Walker, 97 Mo. 162; Tayloe v. Davis, 212 Ala. 282, 102 So. 433, 40 A. L. R., 1. c. 1057.

There is nothing in Section 33, Article VI of the Constitution which prohibits the present members of the Board of Jury Commissioners from being entitled to the increased compensation as provided in Senate Bill No. 12, as jury commissioners.

We must then determine whether Section 8, Article XIV of the Constitution, constitutes a barrier to them accepting this additional compensation at this time by reason of the increase provided by Senate Bill No. 12. This section prohibits the increase of a state, county and municipal officer

during his term of office. Do the members of the Board of Jury Commissioners in Jackson County have a term of office within the meaning of the Constitution? If it is determined that they have no term of office within the meaning of the Constitution, then they are entitled to this increase in compensation immediately upon the signing of Senate Bill No. 12 by the Governor, namely, March 5, 1937.

Section 8795, R. S. Mo. 1929, provides in part:

"The circuit judges of said counties, including the judges of the court having jurisdiction in felony cases, shall be and constitute a board of jury commissioners for such counties, \* \*"

It will be noted that the members are not nominated, appointed or elected to any office, no term of office is created by the statute, but the Legislature has merely stated that the aforementioned judges shall be and constitute a Board of Jury Commissioners. The Legislature at all times may abolish at will the Board of Jury Commissioners or diminish or take away the salary at any time it sees fit, and the members thereof have no vested right whatsoever in the compensation allowed under the Act creating them. The members act on this Board solely at the pleasure of the Legislature. Missouri cases may be cited announcing the doctrine where an officer serves at the pleasure of another does not have a fixed term within the meaning of the Constitution. State ex rel. Rumbold v. Gordon, 238 Mo. 168; State ex inf. v. McKay, 249 Mo. 257.

If it were held that Section 8, Article XIV of the Constitution prohibits the members of the Board of Jury Commissioners from receiving the increase in compensation, and if it were considered as a term of office, we would have the anomalous situation of some members of the Board receiving \$3000.00 and others receiving \$1500.00 per annum. We do not think that there is anything in Section 8, Article XIV, supra, which constitutes a barrier or prohibits the members of the Board of Jury Commissioners from receiving the increase in compensation as provided in Senate Bill No. 12.

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By Section 8795, R. S. No. 1929, the Members of the Board of Jury Commissioners received \$1500.00 each; in 1931 the salary was increased to \$3000.00 each; in 1933 the salary was reduced to \$1500.00 each; then in 1937 under Senate Bill No. 12 the salary was increased to \$3000.00 each; so that for those judges who were elected in 1932 and whose terms do not expire until December 31, 1938, the increase of 1937 is but a restoration of the \$3000.00 salary received by them as jury commissioners under the 1931 law. It would not be reasonable to assume that some of the judges serving as jury commissioners are entitled to only \$1500.00 per annum and others \$3000.00 per annum for performing exactly the same services. As their salaries as jury commissioners have been changed at every regular session of the Legislature since 1929, with the exception of 1935, and as some of the Judges of the Circuit Court of Jackson County are elected every two years, we would have the peculiar situation of some of them receiving \$1500.00 and others \$3000.00 if Section 8, Article XIV constituted an inhibition against the jury commissioners, now serving, receiving the additional compensation.

We note further that Section 2 of Senate Bill No. 12 has an emergency clause. There would be no good reason for an emergency clause if it was not intended that the increase become effective for the benefit of the jury commissioners now serving.

Without extending this opinion further, and we think other cases and reasons might be assigned in support of our conclusions, from the above and foregoing we are of the opinion that the present members of the Board of Jury Commissioners of Jackson County, now serving, are entitled to the increase in compensation as provided by Senate Bill No. 12.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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