

CIRCUIT CLERKS-
Fees & Salaries:

CLERK OF JUVENILE COURT
Salary:

HOUSE BILL 177:

1. Emergency clause not effective under H.B. 177.
2. Clerk permitted change from fee basis to salary, during term, without violating Sec. 8, Art. XIV, Mo. Const.
3. Clerk of Juvenile Court entitled to salary during his present term.

August 6, 1937.

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Honorable Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Mr. Stillwell:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this Department relative to House Bill No. 177, passed by the 59th General Assembly, pertaining to the salaries of the clerks of the circuit courts, and the salary and compensation of the clerks of the juvenile courts, in counties of less than 50,000 inhabitants.

Since this Department has received several requests for opinions relative to House Bill No. 177, we shall consider the various questions raised in these requests and consider all of them in this opinion.

The three questions which seem to be important, and which appear in several of the requests, may be stated as follows:

- 1st. Is the emergency clause attached to said bill sufficient to make said act effective from the date of its signing by the Governor, or will it become effective ninety days after the adjournment of the General Assembly, namely, September 6, 1937?
- 2d. After the effective date of the act will the circuit clerks now in office and during the present term receive out of the county treasury the maximum amount of fees allowed to be retained under the law as enacted in 1933, Laws of Missouri, 1933, page 369 et seq.?

3rd. Are the circuit clerks now in office and during their present term entitled to be paid for their services as clerks of the juvenile courts as provided under Section 11814a, House Bill No. 177?

We shall take up these questions in the above order.

I.

We do not think that the emergency clause attached to House Bill No. 177 makes said act effective from the date of its signing by the Governor under the repeated holdings of the Supreme Court of Missouri.

The emergency clause attached to this bill does not meet the requirements of our Constitution. The mere declaration in an act that it is an emergency measure does not of itself make it such; the emergency must appear upon the face of the bill itself to bring it within the terms of the Constitution and thereby put same into immediate effect from the date of the signing of same by the Governor.

In the case of State ex rel. Harvey v. Linville et al., 318 Mo. 698, 300 S. W. 1066, in which the court had before it the effective date of an act of the Legislature, had this ~~was~~ to say (l. c. 1068):

"Two sections of the Constitution apply to the taking effect of the law, and the effectiveness of an emergency clause. Section 36, art. 4, of the Constitution is as follows:

"Sec. 36. Laws Take Effect, When--
Emergency, Vote Required.--No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly

shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal.'

"That portion of section 57, art. 4, of the Constitution which was later adopted in connection with the referendum, contains this clause applicable to this case:

"The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions and for the support of public schools) either by the petitions signed,' etc.

"It was held in the case of State v. Sullivan, 283 Mo. 546, 224 S. W. 327, that these two sections of the Constitution must be construed together; that a declaration in a bill that it was an emergency measure within the meaning of the Constitution, did not make it so; that the emergency must appear in fact upon the face of the bill to be within the terms of the Constitution, authorizing an emergency clause which would put the act into immediate effect.

"The respondent claims the act of 1919 did not go into effect for 90 days under section 36, art. 4, because it was one subject to the referendum, under the exception mentioned in section 57 of this article:

"Except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses

of the state government, for the maintenance of the state institutions and for the support of public schools.'

"Plainly the emergency clause in the act does not state a condition to which the emergency provision of the Constitution could apply."

The above case was followed and reaffirmed in *Hollowell v. Schuyler County*, 322 Mo. 1230, 18 S. W. (2d) 498.

The effect of an emergency clause on an act was discussed at great length in the case of *State ex rel. Westhues v. Sullivan*, 283 Mo. 546, 224 S. W. 327, wherein the court held that the Legislature cannot, by declaring an emergency, prevent referendum of the statute in coming within the classes enumerated; its power in such instances not being conclusive as its power to declare an emergency under Article IV, Section 36, so as to have an act go into effect immediately. The emergency clause in House Bill No. 177 does not seem to fall within the exceptions contained in the following clause of Section 57, Article IV, of the Constitution:

"The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions and for the support of public schools) either by the petitions signed,' etc."

From the above and foregoing, and the interpretations of the law by our Supreme Court, it is our opinion that the emergency clause attached to this bill is not sufficient under the Constitution and therefore said law will not go into effect until ninety days after the adjournment of the General Assembly, namely, September 6, 1937.

II.

Coming now to the second question as stated above.

House Bill No. 177, enacted by the 59th General Assembly, repealed Sections 11786, 11812 and 11814 adopted by Laws of 1933, at pages 369 et seq., and enacted in lieu thereof five new sections to be numbered 11786, 11812, 11813, 11814 and 11814a. Under Section 11786, Laws of Missouri, 1933, page 369, the clerks were on a fee basis and were allowed to retain fees earned by their office and were limited as to the amounts they were allowed to retain according to the population of their respective counties, and if their office did not earn the maximum amount permitted under the statute they were limited to the amount earned.

Section 11786, as re-enacted by House Bill No. 177, raises the maximum amounts as provided under Laws of 1933 under the population brackets provided therein, and provides:

"The Clerks of the Circuit Courts of this State shall receive for their services annually the following sum: In counties having a population of less than seven thousand five hundred persons, the sum of twelve hundred (\$1200) dollars; in counties having a population of seven thousand five hundred persons and less than ten thousand persons, the sum of fifteen hundred (\$1500) dollars; in counties having a population of ten thousand persons and less than fifteen thousand persons, the sum of seventeen hundred (\$1700) dollars; in counties having a population of fifteen thousand persons and less than seventeen thousand five hundred persons, the sum of nineteen hundred (\$1900) dollars; in counties having a population of seventeen thousand five hundred persons and less than twenty thousand persons, the sum of twenty-one hundred (\$2100) dollars; in counties having a population of twenty thousand persons and less than twenty-five thousand persons, the sum of twenty-three hundred (\$2300) dollars; in counties having a population of twenty-five thousand persons and less than fifty thousand persons, the sum of twenty-five hundred (\$2500) dollars; in counties having a population of fifty thousand persons and less than seventy-five thousand persons, the sum of thirty-

six hundred (\$3600) dollars; in counties having a population of seventy-five thousand persons and less than one hundred fifty thousand persons, the sum of four thousand (\$4000) dollars; in counties having a population of one hundred fifty thousand persons and less than four hundred thousand persons, the sum of five thousand (\$5000) dollars; Provided, that in any county wherein the Clerk of the Circuit Court is ex-officio Recorder of Deeds, said offices shall be considered as one for the purpose of this Section; Provided, it shall be the duty of the Circuit Clerk, who is ex-officio Recorder of Deeds, to charge and collect for the county in all cases every fee accruing to his office as such Recorder of Deeds and to which he may be entitled under the provisions of Section 11804 or any other statute, such Clerk and ex-officio Recorder shall, at the end of each month, file with the County Clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of such Circuit Clerk and ex-officio Recorder of Deeds, upon the filing of said report, to forthwith pay over to the County Treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the County Clerk, and every such Circuit Clerk and ex-officio Recorder of Deeds shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the County treasury as herein provided; Provided, further, that the Clerks of the Circuit Courts shall be allowed to retain in addition to the sums allowed in this Section, all fees earned by him in cases of change of venue from other counties; Provided, further, that until the expiration of their present term of office, the persons holding the office of Circuit Clerk shall be paid the maximum amount as now provided by law, in the manner provided by this Act."

It will be seen from this section that the clerks are placed back on a salary basis and that the persons holding the office of circuit clerk shall be paid as salary the maximum amount as now provided by law.

Section 11813, R. S. Mo. 1929, repealed by Laws of Missouri, 1933, page 369, was re-enacted verbatim by House Bill No. 177, and is as follows:

"The salary of the Clerk, and that of his deputies and assistants, shall be paid out of the county treasury, in monthly installments, at the end of each month. The accounts of all deputies and assistants shall be stated in their names, respectively, and the correctness thereof shall be certified by the officers, respectively, in whose employment they are. The Clerk and his deputies and assistants shall present their accounts to the County Court, and said court shall draw its warrant therefor upon the County Treasurer, to be paid out of any money available in the treasury."

It will, therefore, be seen that it was the intention of the Legislature to pay the circuit clerks a salary out of the county treasury, in monthly installments at the end of each month and that they are to receive the maximum amounts they were permitted to retain under the law of 1933, page 369.

The question then arises whether or not the circuit clerks now in office are to be paid the maximum salary out of the county treasury or are they prohibited from accepting the maximum salary permitted under this act by reason of any constitutional inhibition?

Section 8, Article XIV, Constitution of Missouri, should be considered in connection with this opinion, and provides as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

It may be true that in some counties the circuit clerks will receive more compensation under the new law than they are receiving under the 1933 law, and those clerks whose offices earned an amount equal to or greater than the maximum amounts allowed will not be affected as to the amount of the compensation received but only in the manner of receiving same. Under the 1933 statute (11786, Laws of 1933, p. 369) they were entitled to retain the maximum amount and under the 1937 law they shall be paid the maximum amount as now provided by law in the manner provided by this act.

The almost identical question was before the Supreme Court involving the compensation of the circuit clerks in a similar situation in State ex rel. Emmons v. Farmer, 271 Mo. 306, and evidently the Legislature had before it this case when House Bill No. 177 was introduced, and attempted to meet and comply with the principles as announced in this case. It is a very similar situation and in substance the court held that the fixing of the salaries of circuit clerks at the same amounts they were permitted to retain in any one year from the fees collected by them, is not violative of the constitutional provision declaring that "the compensation of no state, county or municipal officer shall be increased during his term of office." Even though the fees in some counties in prior years did not equal the amount they were permitted to retain, yet if the act fixes their salaries at the maximum amounts they were permitted to retain at the time they were inducted into office, it does not increase their compensation under the rule announced in the Farmer case, supra. This case, to our mind, is on all fours with the question under consideration.

It is, therefore, our opinion that the clerks now in office and during their present term are entitled to receive out of the county treasury in monthly installments at the end of each month the maximum amounts which they were permitted to retain according to their population bracket under the Laws of 1933, and that it is not such an increase in compensation, if increase there may be, as prohibited by Section 8, Article XIV of the Constitution.

III.

The next question to be determined is whether the circuit clerks now in office, and during their present terms, may receive the compensation provided for them for acting as

clerks of the juvenile courts under the provisions of Section 11814a of House Bill No. 177, which provides:

"For their services as Clerks of the Juvenile Courts, also known or designated as the Juvenile Division of the Circuit Court, the Clerks of the Circuit Courts in all counties containing less than fifty thousand inhabitants shall receive and be paid an annual compensation as follows: In counties of less than seventy-five hundred inhabitants, \$100.00; in counties having a population of seventy-five hundred and less than ten thousand inhabitants, \$200.00; in counties having a population of ten thousand and less than fifteen thousand inhabitants, \$300.00; in counties having a population of fifteen thousand and less than seventeen thousand five hundred inhabitants, \$400.00; and in counties having a population of seventeen thousand five hundred and less than fifty thousand inhabitants, \$500.00, payable out of the county treasury at the end of each month in equal monthly installments in the same manner as salaries of such Circuit Clerks as provided under this Act; provided, however, the compensation provided for in this Act for Clerks of the Juvenile Courts shall be in addition to the salary allowed them by law for their services as Clerks for the Circuit Courts and shall be paid to and received by such Clerks in full compensation for all services now or hereafter required of or rendered by them as Clerks of the Juvenile Courts or as Clerks of the Juvenile Division of the Circuit Courts."

What has been known as the "Juvenile Court Law" operative in counties having a population of less than 50,000 inhabitants, now Article 8, Chapter 124, R. S. Mo. 1929, was first adopted by the 49th General Assembly, Laws of Missouri, 1917, page 195.

That part of Section 14162, R. S. Mo. 1929, which is pertinent to the question under consideration, provides:

"The Cape Girardeau Court of Common Pleas and all circuit courts in counties of less than 50,000 population shall have original jurisdiction of all cases coming within the terms of this article. The proceedings of the court in such cases shall be entered in a book or books kept for that purpose and known as the Juvenile Records, and the courts shall be known as the Cape Girardeau Court of Common Pleas and the Circuit Court, and may for convenience be called the Juvenile Court. The Clerk of the Cape Girardeau Court of Common Pleas and the clerk of the Circuit Court in such counties shall act as the clerk of the Juvenile Court. * * * * *"

While the statute provides that the circuit clerk shall act as the clerk of the Juvenile Court, we do not find that fees or compensation of any kind are specifically allowed him for performing the services in the Juvenile Court required by him under the law prior to the enactment of House Bill No. 177.

Section 11785, R. S. Mo. 1929, relating to fees of circuit clerks, provides fees for services in all civil proceedings, Section 11787 provides fees in criminal proceedings, and Section 11788 provides for fees in naturalization matters, but nowhere do we find any special fees are allowed for services for acting as the clerk of the Juvenile Court.

In 1919, by Laws of Missouri, 1919, page 273, the judges of the Juvenile Court, the judge of the Circuit Court in all counties containing less than 50,000 inhabitants, were granted additional compensation in addition to their salary as judges of the circuit court, for which extra and additional services and labors no compensation had theretofore been permitted under the law.

Since the establishment of the Juvenile Division of the Circuit Court in 1917 and the making of the judge of the circuit court, judge thereof, and the circuit clerk, clerk thereof, it has

been entirely separate and distinct from the circuit court itself. "The hearings may be conducted in the judge's chambers or in such other room or apartment as may be provided for such cases, and as far as practicable such cases shall not be heard in conjunction with the other business of the court." Being a separate and distinct division of the court, the judge acts wholly disconnected from his duties as circuit judge. The clerk of the Juvenile Court keeps his juvenile records in books other than records of the circuit clerk. The Juvenile Court was created for certain purposes, namely, the administering of juvenile cases, therefore, the duties of the clerk of the Juvenile Court are not incident to his duties as clerk of the Circuit Court; they are made incidental thereto only by the statute which creates them. These duties could have been delegated to any other individual or public officer by the Legislature, as it saw fit.

In the case of *Little River Drainage District v. Lassater*, 29 S. W. (2d) 716, l. c. 719, in a somewhat analogous case, in dealing with Section 8, Article XIV of the Missouri Constitution, the Supreme Court said:

"The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices, and has no application to additional duties imposed upon such officers not ordinarily incident to their offices. *State ex rel. McGrath v. Walker*, 97 Mo. 162, 10 S. W. 473; *State ex rel. Hickory County v. Dent*, 121 Mo. 162, 25 S. W. 924; *State ex rel. Linn County v. Adams*, 172 Mo. 1, 72 S. W. 655; *State ex rel. Harvey v. Sheehan*, 269 Mo. 421, 190 S. W. 864; *State v. Zevely v. Hackmann*, 300 Mo. 59, 254 S. W. 53; *State ex rel. Barrett v. Boeckler Lumber Co.*, 302 Mo. 187, 257 S. W. 453.

"The collection of drainage district taxes is no part of the duties ordinarily incident to the office of county and township collectors. Such duties are additional duties dependent upon the existence of a drainage district having lands, taxable for district purposes, lying within the territorial jurisdiction of such officers. In collecting such taxes, county and township collectors are officers and agents

of the particular drainage district. They are required to give separate bonds to such district. Section 4396, R. S. 1919. The provisions of section 8, art. 14, of the Constitution, are not violated by section 4575."

When new duties are delegated by statute to a public officer, which are without the scope or range of his office, and additional compensation is provided therefor, the statutory increase is not affected by a constitutional provision prohibiting any increase in the compensation of a public officer after his election or appointment. 21 A. L. R., 258, and cases cited therein.

As was said in *Taylor v. Davis*, 40 A. L. R. 1052, 1. c. 1057, 102 So. 433:

"It has now been long declared by this court that for new and additional duties an incumbent of a public office may be awarded extra compensation without violation of (Constitution), forbidding an increase of salary during the term. It may be said a rule of legislative policy has grown up by sanction of this court's construction of these sections."

Our Supreme Court in *State ex rel. v. Sheehan*, 269 Mo. 421, 1. c. 429, said the following:

"Another contention made is that since the appellant was an officer at the time of the passage of the act, it is inapplicable to him because the Constitution prohibits any increase in the pay of an officer during his term of office. We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (*Cunningham v. Current River Railroad Co.*, 165 Mo. 270; *State ex rel. v.*

Walker, 97 Mo. 162; State ex rel. v. Ranson, 73 Mo. 89; State ex rel. v. McGovney, 92 Mo. 428; County v. Felts, 104 Cal. 60; State ex rel. v. Board of Commissioners, 23 Mont. 250; State ex rel. v. Carson, 6 Wash. 250; Love, Attorney-General v. Baehr, Treasurer, 47 Cal. 364; Furnell v. Mann, 105 Ky. 87; Lewis v. State ex rel., 21 Ohio C. C. 410.)"

5227: As is said in 22 R. C. L. (Supplement), Vol. 7, page

"For new and additional duties which become incident to the office only by their creation, an incumbent of public office may be awarded the extra compensation without violating the constitutional inhibition of increase of salary during the term."

And stated another way in 22 R. C. L., p. 534:

"And where new duties are imposed upon a public officer which are not within the scope of his office, and extra compensation is provided therefor, such increase in compensation is not within the constitutional provision prohibiting any increase in the compensation of any officer during his term of office."

It was the manifest intention of the Legislature to provide compensation for clerks of the Juvenile Court and every reasonable doubt must be resolved in favor of the constitutionality of said law, and it is clearly apparent that the Legislature intended that same be effective for the benefit of the clerks of the Juvenile Court now in office. As was said in Cooley's Constitutional Limitations, 6th Ed., p. 217, the following:

"It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt."

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"The constitutionality of a law, then, is to be presumed, because the legislature, which was first required to pass upon the question, acting, as they must be deemed to have acted, with integrity, and with a just desire to keep within the restrictions laid by the constitution upon their action, have adjudged that it is so. They are a co-ordinate department of the government with the judiciary, invested with very high and responsible duties, as to some of which their acts are not subject to judicial scrutiny, and they legislate under the solemnity of an official oath, which it is not to be supposed they will disregard. It must, therefore, be supposed that their own doubts of the constitutionality of their action have been deliberately solved in its favor, so that the courts may with some confidence repose upon their conclusion, as one based upon their best judgment."

From the above and foregoing, we think it was within the power and authority of the Legislature to provide compensation for the clerks of the Juvenile Court in counties having a population of less than 50,000, and it is our opinion that the clerks now serving, and during their present term, are entitled to same from and after ninety days after the adjournment of the Legislature, namely, September 6, 1937, payable out of the county treasury in monthly installments, as provided under Section 11814a, supra.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General