

OFFICERS:  
SALARIES AND FEES:

Mode of payment of additional compensation to circuit judge and prosecuting attorney on account of additional duties required by the 1939 laws.

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September 11, 1939

Mr. George B. Bridges  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

9-12  
FILED  
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Dear Sir:

This is in reply to yours of the 5th wherein you request an official opinion from this department based on the following letter:

"On August 23, 1939 I wrote to Mr. Franklin Reagan and requested an opinion as to the proper procedure to pay the additional salary granted to the Prosecuting Attorney by the 1939 legislature. In as much as this salary raise goes into effect this month, I should like to have your opinion at your earliest convenience.

"I should also appreciate an opinion as to how the increased salary of the Circuit Court should be paid."

I.

The first part of your request pertains to the additional salary granted to the prosecuting attorney by the 1939 Legislature. The bill which authorizes additional compensation to the prosecuting attorney is House Bill No. 81, which provides as follows:

"When any reputable person, being a resident of the county, shall file a complaint with the prosecuting attorney, stating that any child in the county appears to be a neglected

or delinquent child, the prosecuting attorney shall thereupon file with the clerk of the juvenile court a petition in writing, setting forth the facts and verified by his affidavit. It shall be sufficient that the affidavit be on his information and belief. It shall be the duty of the prosecuting attorney immediately thereafter to fully investigate all the facts concerning such neglected or delinquent child including its school attendance, home condition, and general environment, and to report the same in writing to the juvenile court, and upon hearing of such complaint to appear before the juvenile court and present evidence in connection therewith. The prosecuting attorney shall receive as compensation for the additional services and duties required under this act, in addition to the salary and fees now allowed prosecuting attorneys by law, an amount equal to 25% of the annual salary of such prosecuting attorney, per annum, to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose; Provided, however, that this section shall be applicable only to counties of less than 50,000 population.

"Section 2. The General Assembly declares this act to be a Revision Act within the meaning of Section 41, Article IV, of the Constitution of the State of Missouri."

It will be noted that this bill provides for this additional compensation to the prosecuting attorney to be paid in

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equal monthly installments out of the county treasury.

Referring to the prosecuting attorney's regular salary bill which was enacted in 1933, Laws of Missouri, 1933, page 178, it will be seen that the lawmakers provided that the salary of the prosecuting attorney, as provided under that act, should be paid out of the county treasury. Apparently, the lawmakers have intended that the additional salary, authorized by the 1939 Act, should be paid in the same manner as the prosecuting attorney's salary has been paid under the 1933 law.

We note in your request that you state this salary goes into effect this month. I see from the bill, Section 2 thereof, that the lawmakers have declared that this is a revision act. From our inquiry of the office of the Secretary of State, we find that said House Bill No. 81 was approved on July 5, 1939. On the question as to the date when the revision act goes into effect, I am enclosing an opinion written by Assistant Attorney General Arthur O'Keefe under date of August 18th, 1939, directed to the Secretary of State. I am enclosing herewith a copy of this opinion for your information, and which is the position that this department has taken on the date revision bills go into effect. On the question of the proper procedure to pay this additional salary, I find that this office has heretofore taken the position that the procedure depends on the provisions of the County Budget Act.

You will no doubt recall in 1937 the General Assembly provided for additional compensation for clerks of the circuit court for duties which they perform as clerks of the juvenile court. Referring to that act, Laws of Missouri, 1937, page 447, it will be seen that clerks of the circuit courts were allowed additional compensation for such services which were to be paid out of the county treasury in equal monthly installments. Since the additional compensation was not provided for in the 1937 Budget Act, the request was made upon this department as to how such additional compensation should be paid the clerks for that year. Pursuant to that request, this department, on August 24th, 1937, by an opinion written by Mr. Olliver W. Nolen, Assistant Attorney General, to Honorable G. Derk Green,

Prosecuting Attorney of Greene County, held that, "Therefore, if at the close of the fiscal year there remains any funds in any class, after the payment of all items which have been included in the budget, we are of the opinion that such excess may be used for the payment of the increase in the salary of the circuit clerks." And on November 22, 1935, in an opinion to Honorable H. J. Simmons, Prosecuting Attorney of Vernon County, written by Mr. Nolen, held along this same line as to payment of additional compensation to an officer after the budget has been set up. We are enclosing copies of these opinions for your benefit.

#### CONCLUSION.

Therefore, following the rule announced in the two opinions herewith enclosed, it is the opinion of this department that the additional compensation provided for by House Bill No. 81 of the Sixtieth General Assembly which allows the prosecuting attorney additional pay for his services in connection with the juvenile act can be paid only from the surplus remaining in the treasury after all of the obligations contemplated under the budget have been met.

#### II.

The second part of your request pertains to the manner of payment of the increased salary of a circuit judge. The bill which provides for this increased compensation of a circuit judge is House Bill No. 363 of the Sixtieth General Assembly, and provides as follows:

"In all counties in this state which now constitute, or may hereafter constitute, a separate judicial circuit with only one judge of the circuit court therein, the judge of such circuit court is hereby constituted a jury commissioner, whose duties as such commissioner shall be to assist the county court to prepare jury lists and to draw names as provided for in Sections 8754 and 8755, Revised Statutes

1929. Each such jury commissioner shall, as compensation for his services as jury commissioner solely, as provided in this section, receive a salary of twelve hundred dollars per annum, said salary to be paid by the county in equal monthly installments. In all judicial circuits in this State which circuits are constituted of two or more counties the circuit judge is hereby constituted a jury commissioner charged with the powers and duties herein prescribed, and for the performance of said duties he shall receive a salary of \$1300.00, per annum, to be paid in equal monthly installments out of the State Treasury.

"Section 2. It is specifically declared and determined by the 60th General Assembly of Missouri that this bill shall be considered a revision bill, as provided for in Constitutional Amendment No. 2, Section 41, of Article IV, of the Constitution of the State of Missouri."

I note from the provisions of this bill that the additional compensation provided for therein is to be paid out of the state treasury in equal monthly installments. The first part of the act only applies to counties which now or may hereafter constitute a separate judicial circuit. I note that the circuit in which you are situated does not come within this class.

CONCLUSION.

It is, therefore, the opinion of this department that the salaries of circuit judges, as jury commissioners provided for by House Bill No. 363 in circuits which contain more than one county, should be paid out of the state treasury.

APPROVED:

Respectfully submitted

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J. E. TAYLOR  
(Acting) Attorney General

TYRE W. BURTON  
Assistant Attorney General