

Missouri
PROBATE JUDGES: Senate Bill No. 4 does not invalidly increase or decrease pay; how clerk is compensated; when monthly account may be made.

August 25, 1943

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of August 11, 1943, as follows:

"House Committee Substitute for Senate Bill No. 4 affecting the compensation of Probate Judges in counties with a population of less than 19,000 was signed by the Governor on August 5th, 1943. Does this act increase or decrease the compensation of Probate Judges, during their term, in violation of Section 8, Article 14 and Section 33, Article 6 of the Constitution?

"Under the provisions of this bill, the Probate Judges in these counties are required to turn over to the County Treasurer, each month, all fees collected in his office, and the county will issue to the Probate Judge a warrant in the amount of salary due him as established by this bill, at the end of the year adjustments are to be made between the total amount of fees turned over and the salary received. After this bill becomes effective what will be the condition of the Probate Clerks and their salary? Will the Clerks salary be payable out of fees collected, or will it be payable out of the monthly allowance made to the Probate Judge? Since the bill provides that all fees shall be paid into the Treasury, could the Clerk, in lieu

of that provision, be paid from such fees?

"Under this bill, is the Probate Judge required to submit to the County Court on the first day of each month an itemized list of the fees that are turned to the County Treasurer?"

House Committee Substitute for Senate Bill No. 4, (hereafter referred as merely Senate Bill No. 4), approved by the Governor, August 5, 1943, is as follows: (Section 13404 A Laws 1943 page 86D)

"The Judges of the Probate Courts in counties which now have or may hereafter have a population of less than 19,000 inhabitants shall receive for their services annually, to be paid out of the County Treasury in equal monthly installments at the end of each month by a warrant drawn by the County Court upon the County Treasury minimum salaries as follows: In counties having 10,000 inhabitants or less, the sum of \$750.00; in counties having 10,000 inhabitants and less than 15,000, the sum of \$1200.00; in counties having more than 15,000 inhabitants and less than 17,500, the sum of \$2,000.00; and in counties having more than 17,500 inhabitants and less than 19,000, the sum of \$2,400.00; but should the yearly sum of fees earned and collected by any Probate Judge of any such county, and his clerk or clerks, by virtue of the office, exceed the amount which such Judge would be entitled to receive by reason of the population of said county as aforesaid, then such judge shall be entitled to retain the excess subject to the limitations set out in Section 13404 of Article 2, Chapter 99, Revised Statutes of Missouri, 1939, and the County Court shall draw a warrant or warrants upon the County Treasurer in favor of such Judge for such excess fees. It is further provided that all Probate Judges in such counties shall at the end of each and every month after this act shall take effect, make and file with the County Clerk a report of all fees actually collected by him or his clerk dur-

ing the month, except fees earned and collected for the solemnization of marriages and the hearing and determining of inheritance tax matters, together with a report of all such fees earned during the month but not yet collected, and that he shall at the end of each month pay over to the County Treasurer all monies collected by him or his clerk during the month which are required to be shown in the monthly report as above provided, taking duplicate receipts therefor, one of which shall be filed with the County Clerk, and every such Probate Judge 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."

The two constitutional provisions which it is thought that this bill might violate are Section 8, Article 14 providing:

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

and Section 33, Article 6, providing:

"The judges of * * * all * * * 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."

It will be noticed that Senate Bill No. 4 fixes a "minimum salary" for probate judges in all counties having a population of less than 19,000 inhabitants. The minimum is adjusted on a population classification and ranges from \$2,400.00 to \$750.00 according to the population class into which the county falls. The bill also provides that where the judge's annual fees collected exceed the minimum annual salary, he is entitled to receive said excess "subject to the limitations set out in

Section 13404 of Article 2, Chapter 99, Revised Statutes of Missouri 1939". This limitation, of course, has reference to the maximum compensation which a probate judge may receive.

The maximum compensation of a probate judge under Section 13404, after deducting from his fees a reasonable amount for clerk hire, is the same that is paid to the judge of the circuit court, having jurisdiction in said county, for his services as judge of the circuit court, judge of the juvenile court, jury commissioner, and from change of venue fees (State ex rel. and to Use of Jasper Co. v. Gass, 296 S. W. 431; Smith v. Pettis County, 136 S. W. (2d) 282). Thus, a probate judge's maximum compensation varies from county to county depending on the character of the judicial circuit and the volume of change of venue business in the circuit. However, in all circuits, the annual compensation of the circuit judge will exceed the sum of \$2,400.00, which is the greatest minimum pay fixed for a probate judge under Senate Bill No. 4.

Senate Bill No. 4 does not increase the maximum pay allowed to a probate judge, but only fixes a minimum below which his compensation shall not fall. Section 8, Article 14 of the Constitution has no application to this character of change in a salary or compensation. It is designed to prohibit a change that would increase the maximum compensation allowed to a probate judge under Section 13404. Such was the holding in State ex rel. Emmons v. Farmer, 271 Mo. 306. That case involved a change in the compensation of a circuit clerk. At the time the clerk was elected, the law provided he was to receive his compensation by retaining fees, but not to exceed \$2,000.00 a year. Thereafter, and during the term for which he was elected, the law was changed to provide the clerk with a flat annual salary of \$2,000.00 without regard to the amount of fees collected and paid into the treasury. It was contended that since, prior to the change in the law, the clerk had never actually collected in a year the sum of \$2,000.00 in fees, that therefore to give him a flat salary of \$2,000.00 a year was increasing his compensation during his term contrary to Section 8 of Article 14. The court held that such was not an increase prohibited by the Constitution, saying (l. c. 317):

"We have seen that the amounts (of the maximum fees and the flat salary) are the same * * * and conclude that * * * there has been no increase and the Act is constitutional.* * *" (Parentheses out).

It therefore clearly appears that the court was of the view that in order for the change to have brought about an invalid increase, the flat salary fixed must be in excess of the maximum fees theretofore permitted to be retained.

This same reasoning disposes of any contention that Senate Bill No. 4 violates Section 33, Article 6 of the Constitution. As pointed out above, there has been no increase in the maximum compensation, but rather it remains just as it has always been under Section 13404. Since it is the same as it has always been, there is no invalid increase or decrease such as is prohibited by Section 33 of Article 6.

It therefore is our opinion that Senate Bill No. 4 is valid and takes effect at the time fixed in Section 659, R.S. Missouri 1939.

II.

The next question involves the method by which the probate judge is to compensate his clerk where the judge draws the minimum monthly salary provided in Senate Bill No. 4.

The probate judge under Section 2440, R. S. Missouri 1939, is authorized to appoint a clerk "who shall be paid by said judge". Thus, said clerk is to be paid by the judge out of his (the judge's) compensation which he receives as probate judge. However, in a way, provision is made to allow the judge the expense of his clerk. The way this is done is that where a judge collects fees in one year, in excess of the maximum he may personally retain under Section 13404, he is permitted to retain a further sum, in addition to said maximum, to cover "all reasonable and necessary expenses for clerk hire" (Section 13404).

Under Senate Bill No. 4 probate judges who draw the minimum monthly salary "shall at the end of each and every month * * * make and file with the County Clerk a report of all fees actually collected by him or his clerk during the month, (except marriage and inheritance tax fees) * * * * and that he shall at the end of each month pay over to the County Treasurer all monies collected by him or his clerk

during the month which are required to be shown in the monthly report * * * * *". (underscoring ours). It thus appears the judge will not have access to the fee, as earned, to pay his clerk. They must be turned over to the treasurer monthly. All the court will have is his monthly minimum salary and since the clerk "shall be paid by the judge" the judge will have to pay the clerk out of the amount he receives as a minimum salary.

However, should the yearly fees earned and collected by the judge and his clerk exceed the minimum yearly salary he is paid under Senate Bill No. 4, then the judge is entitled to have a warrant on the county treasury for all of such excess where the excess sum, together with the minimum salary drawn, does not exceed the amount paid to the circuit judge, as specified in part one of this opinion, together with an additional sum to "cover all reasonable and necessary expenses for clerk hire".

It therefore is our ^{my} opinion that the compensation which the probate judge pays to his clerk cannot be paid out of the fees earned since all of said fees must monthly be paid into the county treasury. The probate judge will have to pay his clerk out of his minimum monthly salary.

III.

This question concerns when the probate judge is required to make his monthly accounting of fees and to pay over the fees collected to the county treasury. Senate Bill No. 4 requires the report to be made and filed at the "end of each and every month". It also requires the fees collected to be paid over at the "end of each month".

These references are merely to the end of a certain period, designate as a month. Section 655, R. S. Missouri 1939, lays down certain rules for construction of statutes and provides: "the word 'month' shall mean a calendar month." A calendar month is not at end until midnight of the last day of the month and if the language of Senate Bill No. 4 were taken literally, then this report must be filed and the fees collected paid over at midnight of the last day of the month. However, statutes must be applied with reason and such application would

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not be reasonable. Therefore, we think filing the report and paying the fees as soon after the close of the month as is possible is all that is required. The soonest possible date after the close of the month that such could be done would be the first day of the succeeding month.

It is therefore our opinion a probate judge may file his monthly reports of fees and pay over to the county treasurer the fees collected on the first day of the month following the month for which he must account.

Respectfully Submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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