

SHERIFFS:
CONSTITUTIONAL LAW:

RE: The sheriff of Greene County and his deputies are paid according to the provision of House Bill No. 939 after July 1, 1946.

2 p Smith

July 22, 1946

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Honorable Joseph N. Brown
Prosecuting Attorney
Springfield, Missouri

Dear Mr. Brown:

This will acknowledge receipt of your letter of recent date requesting an opinion of this department as follows:

"It is our information that the Prosecuting Attorney of Buchanan County has requested an opinion regarding the new laws effecting counties in the second class concerning payment of the sheriff and his deputies. We are confronted with the same problem in this county, hence would appreciate a copy of any opinions rendered to Buchanan County.

"Our main concern is whether or not the sheriff and his deputies are paid under the new schedule as set up by the laws pertaining thereto which become effective July 1, 1946."

This department has not, to date, written any opinions regarding payment of officers in Buchanan County, Missouri. However, we will proceed below to answer the question you raise with regard to the sheriff of Greene County and his deputies.

Section 2, page 2 of House Bill No. 939, passed by the 63rd General Assembly and approved by the Governor reads, in part, as follows:

"Section 2. The sheriff, in all counties of the second class, shall receive as compensation for his official services rendered in connection with criminal matters, the sum of \$3600.00 per annum; to be paid to him in twelve equal monthly installments by warrants drawn on the county treasury."

Section 5, page 3, House Bill No. 939 reads, in part, as follows:

"In counties of the second class, the sheriff is hereby authorized to withhold and retain, as compensation for his official services in civil matters, from the fees, penalties, charges, commissions and other money collected by him for his services in such matters, the sum of \$3900.00 for each year of his official term."

Section 9, page 7, of House Bill No. 939, provides as follows:

"The sheriff, in a county of the second class, shall be entitled to such a number of deputies as the judges of the circuit court shall deem necessary for the prompt and proper discharge of the duties of his office. Such deputies shall be appointed by the sheriff, but no appointment shall become effective until approved by the judges of the circuit court of the county. The judges of the circuit court, by agreement with the sheriff, shall fix the salaries of such deputies. A statement of the number of deputies allowed the sheriff, and their compensation, together with the approval of any appointment by the judges of the circuit court shall be in writing and signed by them and filed by the sheriff with the county court."

Section 13, Article VI of the Constitution provides as follows:

"Section 13. Compensation of Officers in Criminal Matters--Fees.--All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

The above constitutional provision requires that sheriffs, as county officers, shall be compensated for their services in criminal matters by salaries only. Under Section 2 of the Schedule of the Constitution all laws inconsistent with the Constitution remained in force until July 1, 1946. Therefore, any statute providing for the compensation of sheriff for criminal services in a manner other than by salary ceased to be in force and effect on and after July 1st of this year. The Constitution provided that salaries should be paid sheriffs for their services in criminal matters after July 1, 1946, and to meet this requirement House Bill No. 939 was passed.

Section 13 of Article VI of the Constitution also provided that fees earned by sheriffs in civil matters may be retained by them "as provided by law". This allowed the Legislature to fix a maximum compensation for sheriffs in civil matters as well as in criminal matters if they so desired and so it was provided in Section 5 of House Bill No. 939 that sheriffs in second class counties were to retain the sum of thirty-nine hundred (\$3900.00) dollars per year for their services in civil matters. The provisions of House Bill No. 939, quoted above in this opinion are, therefore, consistent with the provisions of Section 13 of Article VI of the Constitution.

The question for determination, then, is whether the above quoted provisions of House Bill No. 939 conflict with any other provision of the Constitution. Section 13, Article VII of the Constitution provides as follows:

"Sec. 13. Limitation on Increase of Compensation and Extension of Terms of Office.--The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

The above constitutional provision is not applicable to deputy sheriffs in Greene County. In State ex rel. Dwyer v. Nolte, 172 S. W.(2d) 851, 351 Mo. 278, the court said, l.c. 277 and 278:

"A constitutional or statutory provision prohibiting a change of compensation after an election or appointment during the term of an officer does not apply where, prior to such time, no salary or compensation has been fixed for the office.* * *

"Since the Municipal Assembly, acting as a county court, did not fix the salary of the Treasurer under the provisions of Sec. 13800, it follows

that there was no (857) valid legislative act fixing that salary until May 22, 1939, the effective date of Laws, 1939, p. 486, which fixed the salary at \$8,000.00 per annum. No salary having been lawfully fixed at a lower figure at the beginning of the term to which relator was elected, we hold the Act of May 22, 1939, did not increase his salary during the term for which he was elected, and so Section 8, Article XIV of the Constitution of Missouri was not violated."

In State ex rel. v. Gordon, 142 S. W. 115, 238 Mo. 168, the court said, l. c. 176 and 177:

"* * * 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 increased 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 an officer has no 'term of office' he does not measure up to the constitutional subject-matter and is not within the words or intentment of the Constitution. Undoubtedly the Adjutant-General is an officer and has an office, but has he a 'term of office?' Or, to turn the phrase end for end, to let it interpret itself, has he an office with a term? In the nature of things there cannot be a term of office unless the office has a term. The idea is fortified by the constitutional interdiction against lengthening a term of office; for it is a logical absurdity to speak of not extending a term of office unless the term exists to extend.

* * * *

"* * * The only circumstance required in limitations of terms for years is, that a precise time shall be fixed for the continuance of the terms; so that when the commencement of the term is ascertained, the period of determination, by effluxion of time, may be known with certainty.' (Idalia Co. v. Norman, 232 Mo. l. c. 670, et seq.)* * * Thus, if the beginning is certain, and if the end can be made certain by reference to some mentioned certainty, a term is granted.* * * *"

The case of State ex rel. Johnson, 27 S. W. 399, 123 Mo. 43, held the same as State ex rel. Gordon, supra. These cases dealt with the increase of compensation of officers under Section 8, Article XIV of the Constitution of 1875. This constitutional provision was the same in substance and almost identical in wording as Section 13, Article VII of the new Constitution. Deputy sheriffs were paid by the sheriff under Section 13451, R. S. Mo. 1939 in Counties of the population of Greene County and did not have a term of office. Under House Bill No. 939 they are paid a salary to be fixed by the sheriff and approved by the judges of the circuit court of the county and no term of office is fixed for them in the Bill. Therefore, deputy sheriffs in Greene County did not receive a fixed compensation and did not have a term of office under the law as it existed prior to the passage of House Bill No. 939. Furthermore, they do not have a fixed salary or a definite term of office under House Bill No. 939. Therefore, under the rulings of the cases above quoted, the provisions of Section 13, Article VII of the Constitution are not applicable to deputy sheriffs in Greene County, and the provisions of House Bill No. 939, relative to deputy sheriffs, could not be unconstitutional in this respect.

The question remaining for determination is whether the provisions of House Bill No. 939, relating to the salary of sheriffs in second class counties, are in conflict with Section 13, Article VII prohibiting an increase in the compensation of officers during their term.

Section 13451, supra, provided, in part, as follows:

"Sec. 13451. Authorizing sheriff to retain fees--
amount

"In all counties of this state that now have or may hereafter have, a population of not less than eighty thousand nor more than ninety-five thousand according to the last decennial census of the United States, the sheriff shall be allowed to retain out of the compensation, fees and commissions received by him in accordance with any section or provision of law authorizing said sheriff to charge, receive or be paid any compensation, fees or commissions, a sum not to exceed sixteen thousand (\$16,000.00) dollars for himself and deputy hire, in any one year. It shall be the duty of such sheriff to charge, collect and receive all compensation, fees and commissions now authorized by law to be charged, collected and received by him, but no such sheriff shall retain as compensation for himself and for deputy hire in excess of

the sum of sixteen thousand (\$16,000.00) dollars.
* * *

You will note that this section does not set a specific amount which can be retained by the sheriff as his personal salary. The sixteen thousand (\$16,000.00) dollars mentioned was the salary of the sheriff and of the deputies which he hired. It was thus impossible to determine what was the maximum salary that the sheriff would retain under Section 13451, supra. However, Section 13 of Article IX of the Constitution of 1875 read, in part, as follows:

"Sec. 13. Fees of county or city officers, limit--
quarterly returns-- penalty

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

Thus, the Constitution of 1875 placed a limit upon the amount of compensation the sheriff, as a ministerial officer, could retain. This constitutional provision was in force up until the new Constitution went into effect in March of 1945. The present sheriff of Greene County was elected in the general election of 1944 and took office the first Monday in January, 1945, prior to the effective date of the Constitution of 1945.

The question of whether the ten thousand (\$10,000.00) dollar maximum in the Constitution of 1875 should be considered the salary of the sheriff in Greene County for the purposes of determining whether he has received an increase under the provision of House Bill No. 939, is, we think, determined by the case of State ex rel. Emmons v. Farmer (1917) 196 S. W. 1106, 271 Mo. 306. In that case the Supreme Court of Missouri held that, for the purposes of determining whether there was an increase in the compensation of an officer in violation of the provision of the Constitution of 1875 prohibiting increases in compensation of officers during their terms, the statutory maximum which the officer was allowed to retain, prior to the enactment which it was claimed created an increase in compensation, was to be considered the compensation of the officer. The court said at l. c. 314, 316 and 317:

"While defendants concede that the amount of cash salary relator is entitled to receive under the provisions of the Act of 1915, does not exceed but exactly equals the amount he was entitled to retain under the act of 1913, out of his fees collected, yet they contend that unless the fees which he actually earned and collected amount each year to a sum equal to the \$2000 yearly cash salary, the provisions of the Act of 1915 are unconstitutional, for that they in fact bring about an increase in his compensation during the currency of a given term.

"So, while it is conceded as the figures indicate, that there has been no increase in the stated amount fixed by law as the pay of a circuit clerk during the current term of this relator, yet it is urged there has been an increase in fact, unless the fees collected each year amount to as much as \$2000, regardless of the statutory provision existing when relator took office of retaining as his annual compensation \$2000 out of the fees earned and collected.

"The Act of 1915 putting circuit clerks upon a salary basis, was, it is plain, designedly enacted so that the several salaries fixed thereby and made payable monthly in cash should exactly equal the amounts fixed by statute in 1913, as the amounts which could be retained by each circuit clerk as his annual compensation out of the fees he earned. As we gather the position and contention of defendants, they concede that in all cases and counties wherein the fees actually earned by the several circuit clerks amount in any one year to the sum fixed as their salaries by the Act of 1915, the act is constitutional. At least, if defendants do not concede this, the logic of their contention concedes it for them. The result of such a construction is that some circuit clerks in some counties which contain from twenty-five to thirty thousand population would get the salary fixed by the Act of 1915 some years, and get fees other years, and it would be impossible ever

to tell what method of payment should be employed, or how much compensation the circuit clerk was to get till the end of the year. Likewise in some of the counties these officers would be paid salaries and in others still remain upon a fee basis of compensation. Such results could not have been in legislative contemplation; since two cardinal canons of construction upon the attack of unconstitutionality confront us: One of these is that we must be convinced beyond a reasonable doubt that an act is void under the Constitution before we are warranted in so declaring it (State v. Baskowitz, 250 Mo. 82); the other is that where one construction of a statute would render the act absurd and unforeseeable and the other the converse, we are required to adopt the latter rather than the former. (State ex rel. v. Gordon, 266 Mo. 1. c. 411.)

* * * * *

"We are constrained therefore to hold that the Act of 1913 (Laws 1913, p. 702) fixed the basic compensation for clerks of the circuit courts and that the amounts severally set forth in that act as the sums in fees which such clerks could each retain as their several compensations, constitute the salaries from which we are to determine whether the Act of 1915 increases such compensation. We have seen that the amounts are the same in counties of the class here in question and conclude that as to the relator there has been no increase and the act is constitutional. Let the judgment of the learned judge nisi be affirmed.* * *"

Ordinarily, the same rules of construction applicable to statutes apply also to the construction of Constitutions. State ex rel. Buchanan v. Imel, 146 S. W. 783, 242 Mo. 293.

While the court in the Farmer case dealt with a maximum compensation set by statute, it was applying, in substance, the same constitutional prohibition, the applicability of which we are here determining. Therefore, we think the similarity between the situation presented here and that of the Farmer case requires that we consider that case controlling on the question of the sheriff's compensation

under the old law. The result of this is that the compensation of the sheriff of Greene County under the old law was ten thousand (\$10,000.00) dollars per year.

This ten thousand (\$10,000.00) dollars per year was the sheriff's compensation when he began his term in January 1945. The new Constitution does not carry any provision such as that of Section 13 of Article IX of the Constitution of 1875. The ten thousand (\$10,000.00) dollars per year is, therefore, the compensation which the provision of House Bill No. 939 must not exceed if it is to remain consistent with Section 13, Article VII of the Constitution. It is clear that the total of seventy-five hundred (\$7500.00) dollars, provided under Sections 2 and 5 of House Bill No. 939 as compensation for the sheriff in second class counties, which includes the County of Greene, does not equal the former compensation of ten thousand (\$10,000.00) dollars and these sections of the Bill are, therefore, not in conflict with the Constitution of 1945.

CONCLUSION

It is, therefore, the opinion of this department that the sheriff of Greene County and his deputies should be paid after July 1, 1946 according to the provisions of House Bill No. 939, passed by the 63rd General Assembly and approved by the Governor on April 11, 1946.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mvw