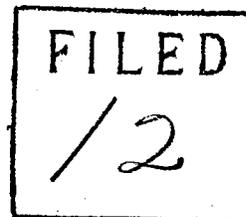


COUNTY OFFICERS: The Circuit Clerk of Greene County is not entitled to receive \$1200 compensation for serving as clerk of the board of paroles of that judicial circuit.

CIRCUIT CLERK:

August 29, 1946



Honorable Joseph M. Brown
Prosecuting Attorney
Greene County
Springfield, Missouri

Attention: Mr. Willard S. Tucker
Assistant Prosecuting Attorney

Dear Sir:

We hereby acknowledge receipt of your letter of recent date, requesting an opinion of this department, which reads as follows:

"As a general proposition (Quoting from Givens v. Davless County, Missouri Supreme Court 1891, 107 Mo. 603 l. c. 608-9, 17 S.W. 998) 'a public officer is not entitled to compensation by virtue of a contract, express or implied. The right to compensation exists, when it exists at all, as a creation of law, and as an incident to the office. * * * In the absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his payment may be changed, or his duties enlarged without the impairment of any vested right. * * *'

"Article VII, section 13, of the Constitution of 1945 reads as follows: '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.'

"I do not find any constitutional prohibitions against decreasing the salary of a public officer, although Section 3 of the Schedule of the

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Constitution of 1945 reads as follows:
'The terms of all persons holding public office to which they have been elected or appointed at the time this Constitution shall take effect shall not be vacated or otherwise affected thereby.' It is a question as to whether this section can be construed to prohibit the decrease in salary of a public officer whose office is not affected by the new Constitution.

"I do not find any statutory prohibitions against decreasing the salary of a public officer.

"We will appreciate your early advice."

As we interpret your letter, the precise question asked is whether or not the General Assembly has the power to diminish the compensation of the Circuit Clerk of Greene County during his term.

Formerly the Circuit Clerk of Greene County was compensated in accordance with Section 13408, R. S. No. 1939, which provides in part:

"The clerks of the circuit courts of this state shall receive for their services annually the following sum: * * * * * 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; * * * * *"

The 63rd General Assembly has passed two bills, House Bill No. 893 and House Bill No. 940, relating to the compensation and duties of circuit clerks in second class counties.

Section 1 of House Bill No. 893, which became effective July 1, 1946, provides:

"The clerk of the circuit court, in all counties of the second class, shall receive as compensation for his services, the sum of \$4000.00 per annum, to be paid in twelve equal monthly installments by

the county on warrants drawn on the county treasury. He shall also be allowed to retain, in addition to said annual salary, all fees earned by him in cases of change of venue from other counties."

House Bill No. 940, which also became effective July 1, 1946, repealed Section 9180, R. S. Mo. 1939, and enacted in lieu thereof a new section to be known as Section 9180, which provides:

"There is hereby created, in each judicial circuit of this state composed of a single county of the second class, a board of paroles, to be known as such, and consisting of the judges of the circuit court of the county so composing such judicial circuit. The judge of that division of the circuit court to which has been assigned, for the time being the duty of trying criminal cases, shall be ex officio chairman, and the clerk of the circuit court shall be ex officio clerk of said board of paroles. Such board of paroles is hereby empowered and authorized to consider, grant, revoke, alter, or terminate paroles and to exercise all the powers hereinafter granted and such other powers as may be provided by law."

Since House Bill No. 940 does not provide for \$1200 compensation for the circuit clerk for acting as the clerk of the board of paroles, it, in fact, reduces the circuit clerk's compensation by that amount.

It is well established that the compensation of a public officer may be increased or diminished during his term, if there are no constitutional prohibitions.

In the case of *Givens v. Daviess County*, 107 Mo. 603, the Supreme Court said, at l. c. 609:

"* * * In the absence of constitutional restrictions the compensation or salary

of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his duties enlarged without the impairment of any vested right. * * * * *

Section 13, Article VII of the Constitution of 1945, prohibits increasing the compensation of the state, county and municipal officers, but there is nothing in the Constitution that prohibits the General Assembly from decreasing the salaries of such officers.

Although House Bill No. 940 still provides that the circuit clerk shall perform the duties of the clerk of the board of paroles, it is well settled that he cannot claim compensation for these duties unless he can point to a statute that provides for such compensation. Ward v. Christian County, 341 Mo. 1115, 111 S.W. (2d) 182.

It might be argued that though the Constitution of 1945 does not prevent the General Assembly from decreasing the salary of a public officer, that Section 3 of the Schedule of the Constitution of 1945 does prevent such a decrease. Said Section 3 provides:

"The terms of all persons holding public office to which they have been elected or appointed at the time this Constitution shall take effect shall not be vacated or otherwise affected thereby."

If the above section prohibits the General Assembly from diminishing the compensation of a public officer during his term, it will be necessary to include the compensation of the officer within the meaning of the phrase "term of office."

In 46 C.J. 963, we find a definition of "term of office," which reads as follows:

"The phrase 'term of office' is one generally used to mean the fixed period of time for which the office may be held, although it is also used to designate the period for which the office is actually held."

The Missouri Supreme Court has held in accordance with the above quotation from Corpus Juris, in the case of State ex rel. Withers v. Stonestreet, 99 Mo. 361, l. c. 371 and 372, as follows:

"* * * The phrase 'term of office,' in ordinary parlance, means the fixed period of time for which the office may be held. And we have a statutory rule for the construction of statutes, requiring that, in construing statutes, 'words and phrases' shall be taken in their plain, ordinary or usual sense,' except that 'technical words and phrases, having a peculiar and appropriate meaning in law, shall be understood according to their technical import.' R. S. 1879, sec. 3126.

"Going to the standards of our language, we find that a term means 'the time for which anything lasts; any limited time; the term of life.' Webster's Dict. And turning to the authorities, they announce that 'the expression, term of office, uniformly designates a fixed and definite period of time.' Anderson's Law Dict. 1023; People v. Brundage, 78 N. Y. 403, 407; Baker, Governor v. Kirk, 33 Ind. 517. So that whether we take the phrase, 'term of office,' in its ordinary or popular sense, or in its technical import, it means one and the same thing: 'A fixed and definite period of time.'

The above quotation was quoted and approved by the Supreme Court of Missouri in the case of State ex inf. Major v. Williams, 222 Mo. 268. Further, in the case of State ex rel. Rumbold v. Gordon, 238 Mo. 168, at l. c. 178, the court said:

"* * * 'The word "term" is uniformly used to designate a fixed and definite period of time. * * * * *'"

It seems clear to us, from the above authorities, that neither the Constitution nor the Schedule of the Constitution of 1945

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prohibits the General Assembly from decreasing the compensation of a public officer during his term.

CONCLUSION

Therefore, it is the opinion of this department that after July 1, 1946, the Circuit Clerk of Greene County is not entitled to receive \$1200 compensation for serving as clerk of the board of paroles of that judicial circuit.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PW:CP