

ASSESSORS)
CONSTITUTIONAL LAW:) House Bills 891 and 890, which raise the
) fees of assessors of third and fourth class
) counties, are not in violation of Sec. 13,
) Art. VII, Const. of Mo. 1945, which prohibits
) the increasing of compensation of county
) officers during their terms.

December 10, 1946

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Mr. Obye Cocker, President
Missouri Assessors Association
Caruthersville, Missouri

Dear Sir:

This is in answer to your request for an opinion of this department as to whether assessors of counties of the third and fourth class shall receive as their compensation fees in accordance with House Bills 891 and 890, respectively, or whether their compensation during their present term shall be fees collected in accordance with Section 10996, R. S. Mo. 1939.

Section 10996, R. S. Mo. 1939, provides in part as follows:

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding forty thousand, thirty cents per list in counties having a population of more than forty thousand, and not exceeding seventy thousand, and twenty-five cents per list in counties having a population in excess of seventy thousand inhabitants, and shall be allowed a fee of three cents per entry for making real estate and personal assessment books, all the real estate and personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other half out of the state treasury: * * *"

Section 1 of House Bill 891 of the 63rd General Assembly, provides:

"The compensation of the county assessor in counties of the third class shall be

45 cents per list, and each county assessor shall be allowed a fee of 6 cents per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other one-half out of the state treasury. The assessor in counties of the third class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book; provided that nothing contained in this section shall be so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list."

Section 1 of House Bill 890 of the 63rd General Assembly, provides:

"The compensation of the county assessor in counties of the fourth class having a population of 7500 or more shall be 45 cents per list, and in counties having a population of less than 7500 shall be 45 cents for each personal assessment list and resident land list and 20 cents for each non-resident real estate assessment list; and in all the counties of the fourth class, each county assessor shall be allowed a fee of 6 cents per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other one-half out of the state treasury. The assessor in counties of the fourth class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book; provided that nothing contained in this section shall be so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list. "

In comparing the fees received under the Revised Statutes of 1939, and those provided for by the 63rd General Assembly, it can readily be seen that there has been an increase in the amount of these fees. This raises the question of the constitutionality of these two House Bills, as applied to the present term of the assessors, because Section 13, Article VII of the Constitution of 1945, provides:

"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."

This section was taken from Section 8, Article XIV of the Constitution of 1875, which provides:

"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."

These sections are substantially, for our purpose, the same, except the word "fees" has been left out of the Constitution of 1945. This elimination will be taken up later in this opinion.

In the case of State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S. W. 1106, the Supreme Court of Missouri had before it the question of whether or not a law fixing the circuit clerk's salary at \$2,000.00 per annum was unconstitutional under the Constitution of 1875. Before this salary bill was enacted the circuit clerk was compensated for his duties by fees but he was allowed to retain only a maximum of \$2,000.00 of the fees collected. It was admitted that during the last four years he collected less than \$2,000.00. Regardless of this fact, the court held that his compensation was not increased within the provision of Section 8, Article XIV of the Constitution of 1875. Although we realize the question presented to us is different in that the fees are actually increased instead of changing from a fee basis of compensation to a salary basis, we believe the ruling in this case would apply to the question before us. In the Emmons case the court stated, 271 Mo., 1. c. 317:

"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. * * *

The court in referring to the Act of 1913 is referring to the Act that set a maximum of \$2,000.00 that the circuit clerk could retain from fees collected. This, they stated was the basic compensation of the circuit clerk and thus is what they construed to be the compensation of the circuit clerk within the meaning of the word "compensation" in Section 8, Article XIV of the Constitution of 1875.

Under the ruling of the Emmons case the assessors of the third and fourth class counties also have their basic compensation established by Section 13450, R. S. Mo. 1939, which provides in part as follows:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. * * *"

Therefore, since the basic compensation of the assessors of third and fourth class counties was not changed by House Bills 890 and 891, there would be no increase of compensation and these two acts would be constitutional.

Although Section 13, Article VII of the Constitution of 1945 does not now contain the word "fees," we are of the opinion that fees are contained within the definition of the word "compensation." In the case of State ex rel. Emmons v. Farmer, supra, the court stated at l. c. 311, 312:

"Moreover, the language of the Constitution includes both fees and salary under the comprehensive term compensation as witness this language: 'The compensation or fees of no state, county or municipal

officer shall be increased during his term of office.' (Sec. 8, art. 14, Constitution.) Clearly fees are not salary; so if the provision of the section quoted supra includes salary at all--and no one would be so bold as to deny that it does--then the word compensation is the generic term and includes as used in the above provision of the Constitution, salary, fees, pay, remuneration for official services performed, in whatever form or manner, or at whatsoever periods the same may be paid. * * * * *

* * * It is clear that the makers of our Constitution used the word compensation as the comprehensive generic term, and thereafter added the word 'fees' as an inclusive and explanatory second-thought, although remuneration by fees was already included by the use of the term compensation, as witness the punctuation, which lacks the comma after the word compensation."

Here the court merely treats the word "fees" as surplusage, which would have no bearing on our question.

Conclusion

Therefore, it is the opinion of this department that after July 1, 1946, assessors of the third and fourth class counties are entitled to charge fees in accordance with House Bills 891 and 890, respectively, and may retain a maximum of \$5,000.00 per annum in accordance with Section 13450, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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