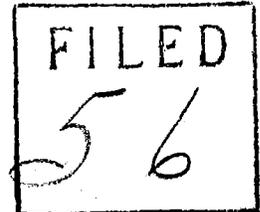


OFFICERS: The Assessor and Coroner of Jasper County shall be paid according to the Laws of the 63rd General Assembly after July 1, 1946; members of the County Court and the County Clerk of Jasper County shall be paid according to the Revised Statutes of Missouri of 1939, during their present term.

October 8, 1946



Honorable Russell Mallett  
Prosecuting Attorney  
Jasper County  
324-5-6 Miners Bank Building  
Joplin, Missouri

Dear Sir:

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

"Section 13 of Article 7 of the new Constitution 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.'

"Under the new Constitution and the present Statutes the Assessor, Members of the County Court, County Clerk, Court Reporters, Circuit Judges, Sheriff and Coroner of Jasper County, Missouri are entitled to increased compensation above that which was paid when they obtained their respective offices.

"Will you please render me an opinion on the above officers as to whether or not they are entitled to increased compensation as provided by the new Constitution and Statutes as of July 1, 1946."

An opinion relating to Court Reporters and Circuit Judges has been prepared by this office and a copy will be forwarded to you with this opinion.

We will discuss first the offices of Assessor and Coroner. The Assessor received compensation from fees collected under Section 10996, R. S. Mo. 1939, and other related statutes. The Coroner received compensation from fees collected under Section 13424, R. S. Mo. 1939, and other related statutes.

Section 13450, R. S. Mo. 1939, provides:

"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. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants or more. After the first day of January, 1891, 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."

Therefore, under the Revised Statutes of Missouri of 1939 the maximum compensation allowed these officers was \$5,000.00.

Under the Constitution of 1945, and the laws passed by the 63rd General Assembly, their compensation has been changed so that now the County Assessor is paid \$5,000.00 per annum, as provided by House Bill No. 889; the Coroner is paid \$2,000.00 per annum, as provided by House Bill No. 896.

This presents the question that if the facts show that the above officers actually collected fees of a less amount than the salaries that are now provided for by the new laws, should this be treated as an increase in their compensation during their present term under Section 13, Article VII of the Constitution of 1945, which 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 question was raised in the case of State ex rel. Emmons v. Farmer, 196 S.W.1106, 271 Mo. 306. Although this case was decided under Section 8, Article XIV of the Constitution of 1875, this section is the same in substance as Section 13, Article VII of the Constitution of 1945. 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.

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"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.

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"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 unenforceable and the other the converse, we are required to adopt the latter rather than the former. (*State ex rel. v. Gordon*, 266 Mo. l. 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. \* \* \*

This, we believe, clearly answers our question as to what the compensation of these officers were before July 1, 1946, when considering the constitutional prohibition of raising an officer's salary during his term. In this case the court even goes so far as to assume that the officer did not receive compensation equal to his new salary, but said that since the maximum set by statute is the same as the new salary, that this was sufficient to comply with the Constitution. Therefore, we believe this case would be controlling as to the office of Assessor and Coroner of Jasper County, and, since the salaries under the laws passed by the 63rd General Assembly are less or equal to \$5,000 there would not be an increase during their present term, under Section 13, Article VII of the Constitution of 1945.

At the present time, this office is preparing a separate opinion with regards to the compensation of the Sheriff of Jasper County which will be forwarded to you at a later date.

There remains the final question of whether the members of the County Court and the County Clerk of Jasper County should be paid under the Revised Statutes of Missouri of 1939 or under the laws passed by the 63rd General Assembly. Section 2494, R. S. Mo. 1939, provides for an annual salary of \$2500.00 for the members of the County Court of Jasper County, while House Bill No. 894 of the 63rd General Assembly, provides for an annual salary of \$3600.00. Section 13433, R. S. Mo. 1939, provides for an annual salary of \$3000.00 for the County Clerk, while House Bill No. 895 of the 63rd General Assembly, provides for an annual salary of \$4000.00. These clearly are increases in compensation during their present term, and would be so considered under Section 13, Article VII of the Constitution of 1945. Since there are no additional duties imposed upon the County Judges or the County Clerk of Jasper County, we are of

Hon. Russell Mallett

(6)

the opinion that the members of the County Court will continue to receive compensation as provided by Section 2494, R. S. Mo. 1939, during their present term of office, and the County Clerk will continue to receive compensation as provided by Section 13433, R. S. Mo. 1939, during his present term of office.

CONCLUSION

Therefore, it is the opinion of this department that:

(1) In Jasper County the Assessor shall be paid according to House Bill No. 889 of the 63rd General Assembly, and the Coroner shall be paid according to House Bill No. 896 of the 63rd General Assembly;

(2) Members of the County Court, during their present term, shall be paid according to Section 2494, R. S. Mo. 1939, and the County Clerk shall be paid according to Section 13433, R. S. Mo. 1939.

Respectfully submitted,

PURSHING WILSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

PW:CP