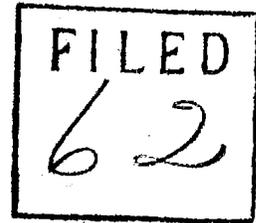


RECORDER OF DEEDS;  
CONSTITUTION:

Compensation of incumbent recorders in counties of the second class not to be increased as provided in House Bill No. 897 during present term of office. Should reappoint deputies.

July 11, 1946



Honorable John W. Mitchell  
Assistant Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri

Dear Sir:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

"I should like your official opinion as to whether or not, beginning July 1, 1946, the recorder of deeds in Buchanan County shall be paid in accordance with the provisions of House Bill No. 897 or whether he shall be paid according to the provisions of Sec. 13487, R. S. No. 1939, which is the present statute on that subject.

"I should also appreciate your advising us whether, in your official opinion, it is necessary for the recorder of deeds and the county court, pursuant to Section 3 of that Bill, to re-appoint deputies for that office. At the present time the deputies have been appointed and are classified under the provisions of Sec. 13489, R. S. No. 1939."

We shall discuss the problems presented in the order that they appear.

That part of House Bill No. 897, with which your first question is concerned, is Section 1, and it provides:

"Section 1. The recorder of deeds, in counties of the second class, shall keep a full, true and faithful account of all fees of every kind received, and shall make a report thereof every year to the county court. He shall retain, as compensation for his services as county recorder, out of the fees received by him, a sum not in excess of \$4000.00 for each year of his official term, and all fees received by him over and above the sum of \$4000.00 for each year of his official term, shall be paid by him into the county treasury, to form a part of the jury fund of the county."

According to this, a recorder of deeds, in counties of the second class, could receive compensation up to \$4000.00 per year. However, by virtue of Section 13487, R. S. Mo. 1939, the recorder of deeds is paid \$3500.00 per year. At the time the incumbent recorder of deeds' term of office started, his salary was determined as being \$3500.00 per year under this last section. The question to be determined is whether the incumbent recorder of deeds is to receive \$4000.00 per year under House Bill No. 897, or \$3500.00 per year under Section 13487, R. S. Mo. 1939, after July 1, 1946.

The Constitution of Missouri, 1945, Article 7, Section 13, 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 is patterned after Article XIV, Section 8 of the Constitution of Missouri, 1875.

In the case of State ex rel. Harvey vs. Sheehan, 190 S. W. 364, 269 Mo. 421, wherein the Legislature enacted a law requiring the circuit attorney of the City of St. Louis to attend coroners' inquests in cases of death caused by violence, which might result in charges of felony, an act

he was not previously required to do, and for such attendance the circuit attorney should receive \$10 for each request to be paid by the city. It was claimed that since the circuit attorney was an officer at the time of the passage of the Act, he could not receive this amount since the Constitution prohibited any increase in the pay of an officer during his term of office. The Supreme Court of Missouri, l. c. 429, held:

"\* \* \* We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (Cunningham v. Current River Railroad Co., 135 Mo. 270; State ex rel. v. Walker, 97 Mo. 162; State ex rel. v. Ranson, 73 Mo. 39; State ex rel. v. McGovney, 92 Mo. 428; County v. Felts, 104 Cal. 60; State ex rel. v. Board of Commissioners, 23 Mont. 250; State ex rel. v. Carson, 6 Wash. 250; Love, Attorney-General v. Baehr, Treasurer, 47 Cal. 364; Purnell v. Mann, 105 Ky. 37; Lewis v. State ex rel. 21 Ohio C.C. 410.)

"It is our opinion that the act is valid and that the appellant is entitled to the fees demanded and that the respondent was not justified in refusing to audit the account and draw a warrant therefor on the city treasury."

In this case the increase was allowed since a new duty had been imposed. Cases applying the same rule are *Denneny v. Silvey*, 302 Mo. 365; *Little River Drainage District v. Lassater*, 29 S. W. (2d) 716, 325 Mo. 493, and cases cited therein.

Before the incumbent recorder of deeds could be entitled to collect the \$4000.00 provided by House Bill No. 897, it would be necessary for new duties to be placed upon that office, such as would bring him within the rule of the cases just cited. We are unable to discover any new duties that have been added under House Bill No. 897. In that event, Article 7, Section 13, Constitution of Missouri 1945, supra, is controlling, and the incumbent recorder of deeds may only receive \$3500.00 per year as provided by Section 13487, R. S. No. 1939. His successor in office would be entitled to the larger amount as provided in House Bill No. 897.

Turning to your second proposition, Section 3 of House Bill No. 897 provides:

"Section 3. The recorder of deeds, in counties of the second class, shall be entitled to appoint such deputies as the recorder of deeds, with the approval of the county court, may deem necessary for the prompt and proper discharge of the duties of his office. Such deputies shall possess the qualifications of clerks of courts of record, and may, in the name of their principal, perform the duties of the recorder of deeds, but all recorders of deeds and their sureties shall be responsible for the official conduct of their deputies. The deputies, appointed as herein provided, shall receive such salaries as may be fixed by the recorder of deeds, with the approval of the county court, and shall be paid out of the county treasury in twelve equal monthly installments. The appointment of every deputy shall be in writing, endorsed with an oath of office, similar to that taken by the recorder and subscribed to by the deputy appointed, and filed by the recorder of deeds with the county court."

This section is at considerable variance with Section 13489, R. S. No. 1939, which provided:

"The collector of revenue, clerk of the circuit court, assessor, recorder of deeds, county treasurer, and any other county officer, shall each be entitled to such a number of deputies and assistants, to be appointed by said county officer, as the county court may deem necessary for the prompt and proper discharge of the duties of their various offices, and such deputies and assistants shall be divided into classes as follows, and be paid in the same manner as the officers: Class A, assistants or deputies; class B, assistants or deputies; class C, office clerks and copyists. Class A assistants or deputies shall be paid sixteen hundred and eighty dollars per year. Class B assistants or deputies shall be paid fifteen hundred dollars per year. Class C office clerks and copyists shall be paid twelve hundred dollars per year."

In Section 5 of House Bill No. 897, the recorder shall appoint as many deputies as he deems necessary, while under Section 13489, R. S. No. 1939, there were to be as many deputies as the county court deemed necessary. There were no qualifications to be met under Section 13489, while under House Bill No. 897, the deputies must possess the qualifications of clerks of courts of record. An oath of office is required under House Bill No. 897, whereas none was required under Section 13489. This would lead to the conclusion that, since the new law does require more than the old, the recorder of deeds should reappoint deputies for that office.

#### CONCLUSION

It is, therefore, the opinion of this department that the incumbent recorder of deeds in counties of the second class may not receive an increase in compensation as provided by Section 1 of House Bill No. 897 during this term

Hon. John W. Mitchell

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of office due to the restriction of Article 7, Section 13, Constitution of Missouri 1945; and he, therefore, is limited to receiving \$3500.00 per year as provided by Section 13489, R. S. No. 1939.

It is our further opinion that the recorder of deeds in such counties should, under Section 3 of House Bill No. 897, reappoint deputies for that office.

Respectfully submitted,

J. MARLIN ANDERSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

JHA:LR