

INCREASING SALARIES OF PUBLIC OFFICERS: Salaries of public officers may be increased under the Constitution during the terms of such officers where additional duties are added to their regular duties.

July 23, 1947



Honorable B. H. Howard
Comptroller
Department of Revenue
Jefferson City, Missouri

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Dear Mr. Howard:

This will acknowledge your recent request for an opinion from this Department respecting the increase in compensation of the members and General Counsel of the Public Service Commission.

Your letter is as follows:

"Senate Bill No. 78, 64th. General Assembly, provides additional duties and compensation for the members and the general counsel of the Public Service Commission.

"We will appreciate an opinion in regard to the date the additional compensation becomes effective with respect to the present holders of the offices."

Senate Bill #78 of the 64th General Assembly repeals Section 5595, Article 1, Chapter 35, R.S. Mo. 1939, and enacts in lieu thereof three new sections to be known as Sections 5595, 5595a and 5595b. Senate Bill #78 was passed February 26, 1947, and approved July 7, 1947.

Section 5595, Article 1, Chapter 35, R.S. Mo. 1939, repealed by said Senate Bill #78, was as follows:

"The commission shall furnish its secretary all of its findings, orders and decisions and the secretary shall compile the same for the purpose of publication in a series of volumes to be designated 'Reports of the public service commission of the state of Missouri,' which shall

be published in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the findings, orders and decisions of the commission therein contained without any further proof or authentication thereof."

Said repealed Section 5595, supra, required the Public Service Commission to furnish to its secretary its orders, findings and decisions to be compiled by the secretary for the purpose of publication, and to have published, the findings, orders and decisions of the Commission. Said Senate Bill #78 shifts such work from the secretary and requires such duties to be performed by the Commission itself and counsel for the Commission by providing in the new Section 5595 that the Commission together with the General Counsel shall be a Publications Commission to select and designate what findings, orders and decisions of the Public Service Commission shall be published and to supervise and cause to be prepared the syllabi for said findings, orders and decisions, and to select and designate such other works, papers or studies of the Public Service Commission relating to the field of public utilities regulation that may be of interest to the public and to cause same to be published in pamphlet or book form. There are thereby added new, different and increased duties to the Commission and the General Counsel thereof not required in the repealed Section 5595.

The law is well settled, both in text and decision, that the addition of new duties to an office imposed upon the officer holding the office will authorize and justify an increase in his compensation during the term of the person holding the office.

46 Corpus Juris, page 1026, upholds this rule by saying:

"* * * but such a provision does not prevent the legislature or its delegate from providing that a change in the duties of an incumbent of an office shall be accompanied by an increase * * *".

Our Supreme Court has spoken definitely upon this question. The case of State vs. Sheehan, 269 Mo. 421, was before the Court on the question submitted here that new duties were added to the functions of an office after the officer had been inducted into office, and whether because of such added duties an increase of compensation was constitutional. The Court in that case, l.c. 429, said the following:

"Another contention made is that since the appellant was an officer at the time of the passage of the act, it is inapplicable to him because the Constitution prohibits any increase in the pay of an officer during his term of office. 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. * * *".

The Supreme Court of Missouri again held in the case of Drainage District vs. Lassater, 325 Mo. 493, that added duties to an office for the incumbent thereof to perform justified an increase of compensation to the officer during his incumbency in office. The Court in that case, l.c. 502, said:

"Appellant contends that Section 4575 authorizes an increase in the compensation of township collectors during their terms of office and, hence, violates Section 8, of Article XIV, of the Missouri Constitution, which provides that 'the compensation or fees of no state, county or municipal officer shall be increased during his term of office; . . .'. As neither county collectors nor township collectors, in respect to their services,

in collecting the taxes of drainage districts, perform any of the duties of state, county or municipal officers, it would seem that the fixing of their compensation for rendering such services to drainage districts is not controlled by Section 8, Article XIV, of the Constitution.

"The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices and has no application to additional duties imposed upon such officers not ordinarily incident to their offices. (State ex rel. McGrath v. Walker, 97 Mo. 162, 10 S.W. 473; State ex rel. Hickory County v. Dent, 121 Mo. 162, 25 S.W. 924; State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S.W. 655; State ex rel. Harvey v. Sheehan, 269 Mo. 421, 190 S.W. 864; State ex rel. Zevly v. Hackmann, 300 Mo. 59, 254 S.W. 53; State ex rel. Barrett v. Boeckler Lumber Company, 302 Mo. 187, 257 S.W. 453.)

"The collection of drainage district taxes is no part of the duties ordinarily incident to the office of county and township collectors. Such duties are additional duties dependent upon the existence of a drainage district having lands, taxable for district purposes, lying within the territorial jurisdiction of such officers. In collecting such taxes, county and township collectors are officers and agents of the particular drainage district. They are required to give separate bonds to such district. (Sec. 4396, R.S. 1919.) The provisions of Section 8, Article XIV, of the Constitution, are not violated by Section 4575."

Thus, it will be seen that our Supreme Court has placed its approval in the above quoted parts of its decision, upon the constitutionality of a legislative act increasing salaries of officers during their terms where new duties are added to such offices after such officers are inducted into office.

Senate Bill #78, as stated above, was passed by the Legislature on February 26, 1947. It was approved by the Governor of Missouri on July 7, 1947.

There was no emergency clause contained in said Senate Bill #78.

The Legislature on May 23, 1947, passed the following Joint Resolution, found in the Senate Journal at page 1121, to-wit:

"HOUSE JOINT RESOLUTION NO. 2.

"WHEREAS, Section 29, Article III of the Constitution of 1945 provides that if the General Assembly recesses for thirty days or more it may prescribe by Joint Resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess; and

"WHEREAS, the 64th General Assembly has resolved to recess for a period beginning Thursday, June 12, 1947, and ending Monday, July 14, 1947; now therefore

"BE IT RESOLVED, by the House of Representatives and Senate, jointly that all laws passed by the 64th General Assembly on or before the 12th day of June, 1947, and not effective, shall take effect ninety days from the beginning of said recess, to-wit: on the 10th day of September, 1947."

It would, therefore, be apparent that said Senate Bill #78 would take effect on September 10, 1947, which would be ninety days after June 12, 1947, the first day of said recess.

CONCLUSION.

It is, therefore, the opinion of this Department that under Senate Bill #78 which is supported by the above cited text and the decisions of our Supreme Court because of the addition of new duties to the Public Service Commission and the General Counsel thereto, the compensation for the members of the Commission and the General Counsel may be increased as provided for in said Senate Bill #78 under the Constitution of this State, and that said enactment becomes effective ninety days from June 12, 1947, to-wit: September 10, 1947.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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