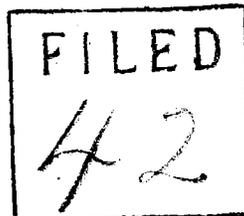


INCREASING SALARIES OF PUBLIC : Salaries of public officials who  
APPOINTIVE OFFICERS. : are appointed and who have no  
: fixed terms of office may be in-  
: creased during their official  
: periods of appointment.

August 2, 1947



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

Dear Mr. Howard:

This will acknowledge your request of recent date for an opinion from this Department, respecting the changes in the salaries of the Commissioner of Finance, Deputy Commissioner of Finance, Examiners, Assistant Examiners and other assistants, and the effective date of such changes respecting those holding such offices at the present time, all relating to the terms and provisions of Senate Bill #181 enacted by the 64th General Assembly of this State.

Your request for such opinion, is as follows:

"Senate Bill No. 181, 64th. General Assembly, provides for changes in the salaries of the Commissioner of Finance, Deputy Commissioner of Finance, examiners, assistant examiners and other assistants.

"We will appreciate an opinion in regard to the effective date of these changes with respect to those holding the offices at the present time."

Section 7877, Article 1, Chapter 39, R.S. Mo. 1939, respecting the appointment, and the tenure of his office, is as follows:

"The commissioner of finance shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office at the pleasure of the governor."

Senate Bill #181 repeals outright, Section 7881 of Article 1, Chapter 39, R.S. Mo. 1939, and Section 7883 of an Act of the 62nd General Assembly, Laws of Missouri, 1943, page 1003, both repealed sections relating to compensation of the Commissioner of Finance of this State and his subordinates, and enacting new sections in lieu thereof, to be known as Sections 7881 and 7883. The two new sections enacted by Senate Bill #181 change the compensation of the Commissioner of Finance, the Deputy Commissioner of Finance and each examiner appointed, by providing for an increase in the compensation of such officers during the time of their appointment.

The new Sections, 7881 and 7883, contained in said Senate Bill #181, provide for the appointment by the Commissioner of Finance, with the approval of the Governor, of a Deputy Commissioner of Finance, and such examiners, not to exceed twenty in number, assistant examiners, and other assistants as, subject to the approval of the Governor, he shall deem necessary to discharge the duties of the Department of Finance. The above named subordinates of the Commissioner of Finance, as it is said in said new Section 7881, "shall hold their offices during and at the pleasure of the Commissioner of Finance."

Thus, we observe that under said Section 7887, Article 1, Chapter 39, R.S. Mo. 1939, the tenure of office of the Commissioner of Finance himself is at the pleasure of the Governor. He, therefore, has no term of office.

Said Section 7881 of Senate Bill #181 provides that the subordinates of the office of the Commissioner of Finance shall hold their offices during and at the pleasure of the Commissioner of Finance. Neither do they, nor any of such subordinates, have any term of office.

We think this question is well considered in the case of State ex rel. vs. Gordon, 238 Mo. 168. That was a case in which an appointive officer's salary was increased during his holding of the office. Our Supreme Court in said case held that where an office is filled by appointment and a definite term of office is not fixed by the Constitution or the statutes, but such office is held at the pleasure of the appointing power, and the incumbent may be removed at any time, such officer is not one of the class which the Constitution prohibits from having an increase in the compensation of such officer during a term of office.

The Supreme Court in said case, l.c. 179, 180, on the point, and holding that the compensation of such an appointive officer may be changed and increased during his holding of the office, said:

"\* \* \* In State ex rel. v. Johnson, 123 Mo. 43, relator Kane, chief of the fire-department of St. Joseph, had his salary increased. He held office during the pleasure of the city council. In holding that the constitutional inhibition did not apply, we said (p. 49): 'It will be observed that this section of the Constitution only embraces within its provisions officers who are elected or appointed for some specific or definite time, and that it has no application whatever to the case in hand, when the relator's term of office is not fixed by any law or ordinance and he simply holds at the pleasure of the appointing power. This is manifest from the fact, that it also provides that the term of office shall not be extended for a longer period than that for which such officer was elected or appointed. The relator was not elected, nor was he appointed for any definite time. There does not seem to be room for argument in regard to the proper meaning of this section, so plain is it in its construction.'

"The gist of the holding is put by our reporter in the first paragraph of the head-notes, viz.: 'A city officer appointed by the council and subject to removal by it at pleasure is not an officer within the meaning of the Constitution, article 14, section 8, prohibiting the increase of the salary of an officer during his term of office.'

"Indeed in every decided case coming under my eye, in which we held the constitutional provision did apply, the officer had a fixed and definite term of office, and if subject to removal at all it was only for cause shown, on a hearing in which he was entitled to due process of law in the form of a notice and charges preferred."

Senate Bill #181 was passed on May 20, 1947. It was approved by the Governor on June 6, 1947. The Bill had no emergency clause.

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 #181 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 said Senate Bill #181, passed by the 64th General Assembly, in changing the salaries of the Commissioner of Finance, Deputy Commissioner of Finance, examiners, assistant examiners and other assistants, by increasing the compensation of such officials, is constitutional and valid, because said officials being appointive officers do not have

Honorable B. H. Howard -5-

a definite term of office, and that said Senate Bill #181 will take effect ninety days from June 12, 1947, to-wit: September 10, 1947.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR  
Attorney General

GWC:ir