

CIRCUIT COURT: Circuit judge required to serve as jury commissioner
Circuit Judge: under Section 13394, R.S. Mo. 1939, but not entitled
SALARY: to \$1300.00 allowed for such services under same
section.

April 18, 1947

FILED

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Honorable James S. Rooney
Circuit Judge
Seventh Judicial Circuit
Liberty, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, which reads:

"I would appreciate your opinion relative to the salary and duties of circuit judges as contained in Section 13394 of the Revised Statutes of 1939. I notice that this section has not been repealed although the sections immediately preceding it and the one just following it, are expressly repealed. It is my position that judges of circuits, such as the Seventh, sit as a Jury Commissioner and not as a Circuit Judge. I understand that by Senate Bill 442, \$6000.00 shall be the total compensation for services rendered as Circuit Judge. The questions which I have in mind and which I would like for you to give me an opinion on, are as follows:

"(1) Is it proper for me to sit with the County Court to prepare jury lists and to draw names for jury service?

"(2) Should I receive the payment of \$1300.00 per annum for performing this duty as a Jury Commissioner?"

This department, under date of August 20, 1946, rendered an opinion to Honorable O. O. Brown, Judge of the 26th Judicial Circuit, holding that under Senate Committee Substitute for Senate Bill No. 442, passed by the 63rd General Assembly, circuit judges are not entitled to the \$10.00 change of venue fee allowed under Section 1074, R.S. Mo. 1939, that under said bill circuit judges in circuits similar to yours shall receive \$6,000.00 annually, and that constitutes the total compensation allowed said judges. Section 6, S.C.S.S.B. No. 442, reads:

"All of said salaries and expenses herein provided shall be paid in monthly installments on the first day of each month and shall constitute the total compensation for all duties performed by, and all expenses of, said judges, and there shall be no further payment made to or accepted by said judges for the performance of any duties required to be performed by them under the law."

One of the cardinal rules of statutory construction is that a public officer performing public services is deemed to be rendering gratuitous services, unless a compensation is provided for same. Furthermore, if the law requires said compensation be paid in a particular manner, then it can be paid no other way, and he is entitled to no further compensation. The court, in announcing the foregoing rule in *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 1.c. 860, so often referred to, said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28, 149 S.W. 638; *King v. Riverland Levee Dist.*, 218 Mo. App. 490, 493, 279 S.W. 195, 196; *State ex rel. Wedeking v. McCracken*, 60 Mo. App. 650, 656."

Section 6, S.C.S.S.B. No. 442, supra, provides an annual salary of \$6,000.00 for judges serving in circuits similar to the Seventh Judicial Circuit, and furthermore, specifically requires said salary to be paid in a particular manner, and that said salary shall constitute the total compensation for all duties performed by, and all expenses of, said judges, and there shall be no further payment made or accepted by said judges for the performance of any duties required to be performed by them under the law, which provision we believe is not ambiguous,

and, therefore, leaves no room for construction. Furthermore, Section 24, Article V of the Constitution of Missouri, 1945, strongly indicates it was the intent to limit judges to the salary as provided by law and to allow no further compensation. Section 24 reads:

"All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office. Until the end of their present terms probate judges shall continue to receive compensation and clerk hire as now provided by law. The salaries of magistrates shall be fixed by law. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. Judges may receive reasonable traveling and other expenses allowed by law. The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries." (Under-scoring ours.)

You mention the fact that the Legislature, in passing S.C.S.S.B. No. 442, specifically repealed Sections 13393 and 13395, R.S. Mo. 1939, but did not specifically repeal Section 13394, R.S. Mo. 1939. The reason for this can most likely be explained in the following manner, that neither section placed any additional duty upon the circuit judges, but merely allowed additional expenses and compensation. In the former section it allowed circuit judges a monthly allowance of \$100.00 for expenses incidental to holding circuit court, and in the latter section it allowed, in addition to the salary, \$125.00 monthly to be paid by the counties of a certain size to their circuit judge, but neither section placed any additional duty upon the circuit judge. Therefore, S.C.S.S.B. No. 442 was enacted in lieu of such provisions allowing circuit judges expenses and compensation. However, it is different with regard to Section 13394, that particular provision does place additional duties upon the circuit judge to act as a jury commissioner, and further allows said judge a \$1300.00 annual salary for such service. The Legislature apparently did not desire or intend to relieve the said circuit judges of this statutory duty to act as jury commissioner, but did intend to compensate him for such services under S.C.S.S.B. No. 442, supra, instead of under Section 13394,

supra. This is apparent under the foregoing provision, Section 6 of said bill, providing for an annual salary and making that the total compensation for all services rendered and expenses of said circuit judges.

You raise the question as to whether the circuit judge might be entitled to the additional \$1300.00 allowed under Section 13394, supra, for serving as jury commissioner and not as circuit judge. A careful examination of the language used by the Legislature, in passing S.C.S.S.B. No. 442, convinces us that it fully intended that such circuit judges should continue to act as jury commissioner, but that they should not be entitled to receive the \$1300.00 allowed under Section 13394, supra. Section 6 of said bill provides the annual salary for said judges for the performance of any duty required by them under the law. Had it been the legislative intent to allow said circuit judges, in addition to the annual compensation provided under said bill, the \$1300.00 allowed under Section 13394, supra, it would have been an easy matter to have so phrased Section 6 of said bill so as to leave no room for construction. Furthermore, the 63rd General Assembly, under S.C.S.S.B. No. 442, made certain exceptions for additional compensation and expenses to circuit judges over and above the annual salary fixed by the act (see Sections 4 and 5). A similar exception could have been included in said act for the \$1300.00 allowed said judges under Section 13394, R.S. Mo. 1939. However, this was not done.

CONCLUSION

Therefore, it is the opinion of this department that circuit judges serving in judicial circuits similar to the Seventh Judicial Circuit are still required to serve as jury commissioner as provided in Section 13394, R.S. Mo. 1939. However, said judges are not entitled to receive for such services the \$1300.00 per annum allowed under Section 13394, R.S. Mo. 1939, but are entitled to only such compensation as provided in S.C.S.S.B. No. 442, passed by the 63rd General Assembly of the State of Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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