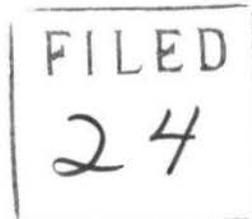


COMPENSATION TO BE PAID : In determining compensation to be paid  
PROSECUTING ATTORNEYS : Prosecuting Attorneys under House Bill  
UNDER HOUSE BILL No. 297:: No. 297, the proper procedure is to add  
25% of the sum provided under Section 12939  
plus 25% of the sum provided under Section  
9701.

July 18, 1949

Mr. William Lee Dodd  
Prosecuting Attorney  
Ripley County  
Doniphan, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion. Your request is embodied in the following language:

"I would like an interpretation of House Bill No. 297. This Bill raises the compensation of the Prosecuting Attorney 25%. My salary is \$1300.00 per year plus \$325.00 per year for juvenile cases, making a total of \$1625.00. Is this raise 25% of the \$1625.00?"

Section 12939 Mo. R.S.A. 1939, fixes the salaries of prosecuting attorneys in all Missouri counties having a population of less than 200,000, which brings Ripley County within the provisions of this section inasmuch as it has a population of between 12,500 and 15,000, which, according to section 12939, fixes the salary of the prosecuting attorney of Ripley County at \$1300.00 per annum. This section specifically designates such payment as "salary", and it is so construed in numerous cases decided under this section.

Section 9701 Mo. R.S.A. 1939, states:

"When any reputable person, being a resident of the county, shall file a complaint with the prosecuting attorney, stating that any child in the county appears to be a neglected or delinquent child the prosecuting attorney shall thereupon file with the clerk of the juvenile court a petition in writing setting forth the facts and verified by his affidavit. It shall be sufficient that the affidavit be on his information and belief. It shall be the duty of the prosecuting attorney immediately thereafter to fully investigate all

the facts concerning such neglected or delinquent child including its school attendance, home condition, and general environment, and to report the same in writing to the juvenile court, and upon hearing of such complaint to appear before the juvenile court and present evidence in connection therewith. The prosecuting attorney shall receive as compensation for the additional services and duties required under this law, in addition to the salary and fees now allowed prosecuting attorneys by law, an amount equal to 25% of the annual salary of such prosecuting attorney per annum, to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose: Provided, however, that this section shall be applicable only to counties of less than 50,000 population."

This sum is referred to in the section as "compensation", and, being 25% of \$1300.00, amounts to \$325.00, in your case.

House Bill No. 297 reads:

"The prosecuting attorney in counties of the third and fourth class is hereby required to attend inquests by coroners in cases of death occurring by violence, and which may result in a charge of felony, and said prosecuting or circuit attorney shall make an investigation concerning said death and cause to be brought before the coroner any witnesses he may desire and shall be permitted by the coroner to assist in the interrogation of witnesses for the full development of the circumstances leading up to and resulting in said death, and for his information concerning any possible criminal charge that may grow out of the same. Prosecuting attorneys shall receive as compensation for the additional services and duties required under this law, in addition to the salaries and fees now allowed such prosecuting attorneys by law, an amount equal to twenty-five percent of the annual salary and fees of

such prosecuting attorney, per annum to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose." \* \* \* \* \*

This payment is also referred to as "compensation". As stated above, the regular salary of the prosecuting attorney of Ripley County is fixed by section 12939 at \$1300.00 per annum, and is "salary". Section 9701 allows the prosecuting attorney 25% of this regular salary in addition, which makes a total in your case of \$1625.00. This extra 25% is referred to as "compensation". House Bill No. 297 allows prosecuting attorneys "in addition to the salaries and fees now allowed such prosecuting attorney by law, an amount equal to 25% of the annual salary and fees of such prosecuting attorney per annum . . . . ."

The question before us is whether the 25% provided for by House Bill No. 297 should be calculated upon the basis of the salary of \$1300.00 fixed by Section 12939, or by that sum plus the additional sum, in your case \$325.00, set by section 9701. If it is calculated upon the salary set by section 12939, then your total compensation would be \$1950.00 per annum. If it be calculated upon the sum provided to be paid under section 12939 plus the sum to be paid under section No. 9701, the total sum to be paid you would be \$1300.00, plus \$325.00, which is \$1625.00, and 25% of \$1625.00, which is \$406.25, making a total sum of \$2031.25 per annum.

To determine this issue we must, therefore, construe that portion of House Bill No. 297, which reads:

"Prosecuting attorneys shall receive as compensation for the additional services and duties required under this law, in addition to the salaries and fees now allowed such prosecuting attorneys by law, an amount equal to twenty-five percent of the annual salary and fees of such prosecuting attorney, per annum."

It will be observed that House Bill No. 297, in the first instance, uses the phrase "salaries and fees".

The use of the word "fees" is improper, for prosecuting attorneys do not receive fees. Section 12939 provides a "salary" and Section 9701 provides "compensation". By using the word "salaries" as House Bill No. 297 does in the first instance, and since "compensation" as used in Section 9701, may take the form of salary, we could with justification hold that when House Bill No. 297 uses the word "salaries" as being the base figure upon which the 25%, provided for in House Bill No. 297, is to be calculated, that it means the \$1300.00 provided for in Section 12939 plus the \$325.00 provided for in Section 9701, that is, in your case 25% of \$1625.00. Farther on, however, House Bill No. 297, in referring to precisely the same payments as it referred to in using the phrase "salaries and fees", uses the term "salary and fees", as being the base figure upon which the 25% provided for in House Bill No. 297 is to be calculated.

This gives rise to an ambiguity. In this instance a more meticulous attention to the niceties of grammatical construction would have been helpful, but we consider it to be our duty not to let the intent of the Bill be defeated by a technicality, or technicalities, and it seems to us that the intent of the Bill was that the 25% provided by House Bill No. 297 was to be calculated upon the "salary" provided by Section 12939 plus the "compensation" provided by Section 9701. We believe that when the Bill, in the second instance, used the term "salary and fees", it meant by "salary" the amount provided for in Section 12939, and by "fees" the amount provided for by House Bill No. 297 would be 25% of \$1625.00, and not 25% of \$1300.00, or a total of \$2031.25 per annum under Sections 12939, 9701 and House Bill No. 297.

#### CONCLUSION

It is the conclusion of this department that the meaning of House Bill No. 297, insofar as it relates to additional compensation to be paid to prosecuting attorneys in counties of less than 200,000 population, is that prosecuting attorneys should be paid under it 25% of the sum allowed to them under Section 12939 plus 25% of the additional sum allowed to them under Section 9701.

Respectfully submitted,

APPROVED:

HUGH P. WILLIAMSON  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General