

CONSTITUTIONAL LAW )  
OFFICERS )

Provisions of House Bill No. 297 of the Sixty-Fifth General Assembly applicable to incumbents in office of Prosecuting Attorney during current term.

July 27th, 1949

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FILED  
81

Honorable Sam Semple  
Prosecuting Attorney  
Moberly, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"House Bill No. 297, passed by the present General Assembly and signed by the Governor, provided for additional compensation for Prosecuting Attorneys, for attending inquests by coroners in cases of death occurring by violence.

"Article VII, Section 13 of the Constitution of Missouri, 1945, provides that the compensation of a county officer shall not be increased during the term of office.

"May I have your opinion as to whether incumbent Prosecuting Attorneys are entitled to this increase?"

As stated in your request, the Sixty-Fifth General Assembly has enacted House Bill No. 297, which imposes certain duties upon Prosecuting Attorneys, in addition to those previously required by law to be performed by such officers. In addition, provision is made for compensation for such additional duties.

Section 13, Article VII, Constitution of 1945, reads as follows:

"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."

Under the Constitution of 1875, the following prohibition upon such increase in compensation or fees appeared as Section 8 of

Article 14, reading as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

Several cases were decided under this provision which we deem pertinent to your request.

As has been pointed out, the new duties imposed upon Prosecuting Attorneys by House Bill No. 297 of the Sixty-Fifth General Assembly were not previously incident to the discharge of the duties of that office. In the premises we believe the case of Little River Drainage Dist. v. Lassiter, 29 S.W. (2d) 716, 325 Mo. 493, to be in point. In that case the Supreme Court of Missouri was construing the constitutionality of an act providing for additional fees to be allowed township collectors for collecting drainage district taxes. The rule was therein stated in the following language:

"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 v. Zevly v. Hackmann, 300 Mo. 59, 254 S. W. 53; State ex rel. Barrett v. Boeckler Lumber Co., 302 Mo. 187; 257 S. W. 453."

(Underscoring ours.)

In view of the similarity of phraseology and meaning of the two constitutional provisions quoted supra, we believe that the rule quoted authorizes the payment to the respective Prosecuting Attorneys from and after the effective date of House Bill No. 297 of the Sixty-Fifth General Assembly, of the additional compensation provided therein.

CONCLUSION.

In the premises we are of the opinion that by reason of the imposition upon the several Prosecuting Attorneys of the various counties of this state of additional duties which are not ordinarily incident to their offices by House Bill No. 297 of the Sixty-Fifth General Assembly, such act does not violate the provisions of Section 13 of Article VII, of the Constitution of 1945, by providing additional compensation for such additional duties.

Respectfully submitted,

APPROVED:

WILL F. BERRY, JR.  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

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