

JUDICIARY:
RETIREMENT COMPENSATION
OF JUDGES & COMMISSIONERS:

Retirement compensation of judges
and commissioners in accordance
with House Bill No. 118, should
be computed as one-third of salary
provided for by law at the present
time or at any future time.

66th Assembly

FILED
71

November 27, 1951

Honorable Elmer L. Pigg
State Comptroller & Director of the Budget
State of Missouri
Jefferson City, Missouri

11-27-51

Dear Mr. Pigg:

You recently requested an opinion of this department,
which reads as follows:

"House Bill No. 118, which becomes effective on October 9, provides for retirement compensation for certain judges.

"I need your official opinion on the meaning of lines 16, 17, 18 and 19, section 1, page 2, which states:

"*** salary or retirement compensation during the remainder of his life a sum equal in amount to one-third the salary or compensation then or thereafter provided for by law ***".

"Does this mean the judge who applies for retirement is to receive one-third of his salary at the time he retired or one-third of the salary of that office now? Some judges who seek to retire received a much lower salary than that office pays today. On which amount should the computation be made?

"I shall appreciate your official opinion as soon as convenient."

We believe that in considering the quoted excerpt from Section 1 of House Bill No. 118, the interpretation would be that the person retiring would receive one-third of the salary provided for the office last held before he qualified at the date the payment of salary is made. If the salary of the

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office is increased, then the salary or compensation would be increased to one-third of the new salary provided for the office by law.

It is necessary, however, since the effective time of the "then or thereafter" must refer to time contained within the law, to quote Section 1 of House Bill No. 118 of the 66th General Assembly in its entirety. It is as follows:

"Any person having reached the age of 65 years and having in this state served an aggregate of 12 years, continuously or otherwise, as a judge or commissioner of the Supreme Court, or as a judge or commissioner of any of the Courts of Appeals, or as a circuit judge, or as a judge of a Court of Criminal Correction, or as a judge of a Court of Common Pleas, or either or both as judge or commissioner of any of said courts, and who shall have ceased to hold such office by reason of the expiration of his term, or voluntary resignation or retirement by reason of having reached the age of 75 years, under Section 25, Article 5, of the Constitution of Missouri, shall, if he so elects as hereinafter provided, be made, constituted and appointed a special commissioner or referee for and during the remainder of his life and shall, while he remains a resident of Missouri, be entitled to and shall receive as annual compensation, salary or retirement compensation during the remainder of his life a sum equal in amount to one-third the salary or compensation then or thereafter provided for by law for the office from which he has retired, and said sum shall be payable monthly out of the general revenue of the State of Missouri."

Considering the entire section quoted above, there are times contained therein to which the term "then or thereafter" could apply. The first reference to such time is as follows:

"Any person having reached the age of 65 years and having in this state served an aggregate of 12 years, * * * and who shall have ceased to hold such office * * *."

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This describes the first instance that "annual compensation, salary or retirement compensation" would be available to a person under the statute. There is the further retirement qualification that he shall have ceased to hold such office. This further modifies the qualifications for being appointed as commissioner.

The next reference contained in the section to the element of time is:

"* * * if he so elects as hereinafter provided, be made, constituted and appointed a special commissioner or referee for and during the remainder of his life and shall, * * *."

Continuing the same sentence, this reference to time above is further clarified by "while he remains a resident of Missouri." This is another reference to time. However, this last reference must certainly modify the preceding thought with a limitation of residence and becomes a part thereof.

We can consider, we believe, in getting at the meaning of this section that the Legislature did not designate in dollars and cents the amount to be paid to such commissioners upon or after their appointment. Instead, it took a proportion of the pay for the office, at the time of retirement, at the present, or in the future. The statute reads: "Then or thereafter provided for by law." As the salaries of the judges or commissioners affected by the Act vary not only by judicial rank but also by the population of the circuits and by the salary at the time such judge or commissioner served, this does not constitute a completely compelling argument for any of the possible legislative meanings. Section 1.090, RSMo 1949, reads as follows:

"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

If the meaning of Section 1 of House Bill No. 118 should be considered ambiguous and the adverbs "then or thereafter" were to be considered without a definite time to which they would refer, the courts would, we believe, consider the results

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of the proposed interpretations. It was said in the case of Bragg City Special Road District v. Johnson, 208 S.W. (2d) 22, 323 Mo. 990, 1.c. 999:

"* * * It has been ruled by this court many times, that in the construction of statutes which are not clear in meaning, the results and consequences of any proposed interpretation of the statute may properly be considered as a guide as to the probable intent of the lawmaker, from the language used. (Kane v. Kansas City, Ft. Scott & M. Ry., 112 Mo. 34; State ex rel. v. Slover, 126 Mo. 652, 661.) * * *".

We feel, therefore, that we are at liberty to look into some of the consequences of this act. If we should interpret it to mean that the salary from which payments of one-third would be calculated was the salary referred to which was paid during any particular time of the service, then the act does not specify the month or year of service upon which the calculations would be based. If that was the intent of the Legislature, we believe it would have designated the year or month from which the proportion of one-third should be taken. In further interpretation, if "then" refers to the time of appointment, it is indeed questionable as to what the term "thereafter" would be deemed to refer. This law is enacted to apply from the time it becomes effective and thereafter as long as it remains on the statute books.

If the Legislature had intended commissioners to receive a proportion of the salary received during the last year of service we believe it would have been more easily said and certainly said more definitely.

This is a new position that has been created by the Legislature, the position of commissioner. It is created for a particular group. Definitely, it is for service that members of that group have rendered to the state. That service is also a requisite qualification necessary before the position of commissioner can be fulfilled. The term of this new office is for life. The Legislature no doubt took cognizance of the changes made in the salaries of judicial personnel even since the turn of the century. We believe that they meant to keep those salaries on an even proportion to the salary at the time payments of salaries or compensation are made to commissioners. We believe that it was the intent of the Legislature that this law

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should require payment out of the general revenue of the state, of one-third of the total salary that is provided by law for the office from which the newly constituted commissioner has retired. We believe that the phrase means the same with or without the word "total" as most certainly all of the salary is provided for by law.

CONCLUSION

It is, therefore, the opinion of this department that the meaning of lines 16, 17, 18 and 19 of Section 1, page 2 of House Bill No. 118, "*** salary or retirement compensation during the remainder of his life a sum equal in amount to one-third the salary or compensation then or thereafter provided for by law ***" is that the judge or commissioner, who applies for retirement is to receive one-third of the salary of the office he last held before he qualified. The computation would be made on the basis of one-third of the salary that is paid to that office, at the time of payment.

Respectfully submitted,

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APPROVED:

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