

STATE BOARD OF ACCOUNTANCY:  
EFFECTIVE DATE OF HOUSE BILL  
#449 of 66th GENERAL ASSEMBLY  
NOW SECTION 326.200 RSMO 1949:  
COMPENSATION OF BOARD MEMBERS:

Effective date of House Bill No. 449  
was October 9, 1951; and that the  
members of the State Board of Accountancy  
appointed prior to October 9, 1951, shall  
not receive the increase of compensation  
allowed in H.B. 449, supra, during their  
present terms of office.



April 23, 1952

Missouri State Board of Accountancy  
209 Monroe Street  
Jefferson City, Missouri

Gentlemen:

Your request for an official opinion of this office has  
been referred to me for reply. Your request reads as follows:

"The Missouri State Board of Accountancy  
would appreciate the opinion of your  
office as to the construction of section  
326.200 relative to the compensation of  
board members which was altered by house  
bill 449, enacted by the 66th General  
Assembly, to increase the fees of the board  
members from five dollars a day to ten  
dollars a day.

"Will you please advise the board as to when  
this bill went into effect, and whether or  
not this additional compensation may be paid  
immediately. We would like for you to keep  
in mind that members of the board are appointed  
for terms that overlap the terms of other  
members, and if the increase may be paid only  
to successors of the present members, there  
will be considerable confusion in regard to  
the payments during the years some of the  
members will receive the increase and others  
will not."

House Bill No. 449 of the 66th General Assembly was truly  
agreed to and finally passed without any emergency clause and  
was therefore not in effect on or before the 11th day of July,  
1951. The same was approved and signed by the Governor on July  
31, 1951. On June 15, 1951, there was passed by the General  
Assembly of Missouri, House Concurrent Resolution No. 12, which  
reads:

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"Whereas, Section 29, Article II 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 66th General Assembly has resolved to recess for a period beginning July 11, 1951, and ending August 15, 1951,

"Now, therefore, be it resolved by the House of Representatives and Senate jointly, that all laws passed by the 66th General Assembly of the State of Missouri, on or before the 11th day of July, 1951, and not effective, shall take effect ninety days from the beginning of said recess, that is to say, shall take effect and be in force on the 9th day of October, 1951."

From this resolution it is our opinion that House Bill No. 449, supra, repealed former Section 326.200, RSMo 1949, and enacted a new section, Section 326.200, which was effective as of October 9, 1951, and which raised the compensation of the members of the State Board of Accountancy from \$5.00 to \$10.00 per day.

Section 326.160, RSMo 1949, dealing with State Board of Accountancy--Members--Qualifications--Terms--is in part, as follows:

"1. Within sixty days after the taking effect of this law, the governor shall appoint five suitable persons, by and with the advice and consent of the senate, who shall constitute a board by the name and style of the 'Missouri State Board of Accountancy,' with the functions, powers and duties herein prescribed.

"2. Each member of said board, both those initially appointed and all successor appointees, shall be the holder of a certificate as a certified public accountant, issued pursuant to and under the laws of this state; and shall, at the time of his appointment, be a resident of this state;

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and have practiced continuously in this state, as and under the designation of a certified public accountant, or as a public accountant, for a period of at least five years immediately preceding his appointment.

"3. The term of one of the initial appointees shall expire with July first of the calendar year immediately succeeding that in which his appointment was made; and the terms of the other initial appointees shall expire, respectively, with the first day of July, one, two, three and four years after the expiration of the shortest term aforesaid. Upon the expiration of each of said initial terms, the term of office of each member thereafter appointed shall be five years. Vacancies shall be filled by the governor for the unexpired term. Every member shall, however, hold office until his successor is appointed and qualified. No member whose term shall have expired, or been terminated for any reason, shall be eligible for reappointment for a period of two years.

"4. To every member appointed by the governor there shall be issued a commission or certificate of appointment; and every appointee, before entering upon his duties, shall take the oath of office required by the constitution of all officers under the authority of this state.

"5. Any member of the board may be removed by the governor for misconduct, incompetency or neglect of duty; provided, he shall first be given an opportunity to be heard in his own behalf."  
(Underscoring ours.)

Thus, after a reading of the above statute, we observe that, under part 3 thereof, it states that: "the term of each member thereafter appointed shall be five years." Therefore, the statute clearly shows that the member has a specific term of five years and as such we conclude that he is an officer of the state within the meaning of Article VII, Section 13, Constitution of Missouri, 1945. Further, we note after a study of part 5 that any member of the Board may be removed by the Governor for the reasons given therein but that he shall first have been given an opportunity to be heard in his own behalf. Therefore, it is our opinion that the Board members, as officers of the state, have a definite term and cannot be removed except for cause upon a hearing first being had by the Governor.

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

"Sec. 13. Limitation on Increase of Compensation and Extension of Terms of Office.--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."

In accordance with the above provision of our present Constitution and a similar one of the Constitution of 1875, Article XIV, Section 8, our courts have many times held that officers, such as the members of the State Board of Accountancy, have a set and definite term of office and are not entitled to any increase in their compensation during that term of office.

This reasoning is the reason for our opinion here holding that members of the State Board of Accountancy, who were appointed prior to the 9th day of October, 1951, are not entitled to the increase in compensation during their terms of office, but we are of the opinion that anyone appointed to said Board after the aforesaid 9th day of October is entitled to the increased compensation granted by House Bill No. 449 of the 66th General Assembly, supra.

CONCLUSION

It is, therefore, the opinion of this department that the effective date of House Bill No. 449, supra, was October 9th, 1951; that the members of the State Board of Accountancy, appointed prior to October 9, 1951, shall not receive the increase granted by House Bill No. 449, supra, during their present terms of office; and that any member appointed to the State Board of Accountancy after October 9, 1951, shall be entitled to the increased compensation mentioned in House Bill No. 449, supra, being the sum of \$10.00 for each day devoted to the affairs of the Board.

Respectfully submitted,

A. BERTRAM ELAM  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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