

IT COURTS.

JULGES:

SALARIES AND FEES:

Circuit Judge retired under Article 5, Sec. 27, Constitution of Missouri, 1945, is entitled to receive one-half of the amount of what would be his present salary were he not retired and remained in office, rather than one-half of his salary at the time of his retirement. Such retired Judges are ~~those~~ entitled to the benefits of any increase of salary of Circuit Judges made after their retirement, but before the end of their term of office.

July 30, 1953



Honorable Newton Atterbury
Comptroller and Budget Director
Department of Revenue
Jefferson City, Missouri

Dear Mr. Atterbury:

You request an official opinion of this department as follows:

"We are quoting below a letter received from Ray G. Cowan, retired Circuit Judge, Jackson County, Missouri:

"Dear Mr. Atterbury:

I retired as Circuit Judge of Jackson County, Missouri, under Section 27 of Article 5 of the Constitution of 1945 of Missouri. This section provides that I am to receive one-half of my regular compensation as Judge of said circuit until the end of my term of office. My term of office expires on January 1, 1957.

Since retiring I have been paid monthly on the basis of an annual salary for Circuit Court Judges of Jackson County, Missouri of \$10,000. Before I retired from the bench a statutory enactment increasing the pay of said Circuit Court Judges to \$11,000 was passed and was to become effective on February, 1952. Recently the salaries for Circuit Court Judges of Jackson County, Missouri were again increased to \$14,000 effective August, 1953. I am of the opinion that my compensation under Section 27, Article 5

Honorable Newton Atterbury:

of the Constitution of 1945 of Missouri should be made to reflect these increases in salary. I would be sincerely appreciative if you would attend to this matter.

With every cordial good wish, I remain

Very truly yours,

Ray G. Cowan'

"We would like an opinion as to whether Judge Cowan should receive any benefit from the increases in Circuit Court Judges' pay since his retirement. We understand from Judge Cowan that the increase from \$10,000 to \$11,000 was passed by the Legislature and signed by the Governor but had not become effective prior to his retirement."

Voluntary retirement of Judges of courts of record and Magistrates because of physical or mental disability is provided by Article V, Section 27, Constitution of Missouri, 1945, as follows:

"Sec. 27. Retirement of Judges.--Any judge of a court of record or magistrate who is unable to discharge the duties of his office with efficiency by reason of continued sickness or physical or mental infirmity shall be retired from the office by order of a committee composed of three judges of the supreme court, one judge of each of the courts of appeals, and three circuit judges, elected by the judges of the respective courts, after notice and a fair hearing and on a finding of two-thirds of the committee that the disability is permanent. The judge so retired shall receive one-half his regular compensation until the end of his term of office. The supreme court shall prescribe rules of procedure under this section."

(Underscoring ours.)

Honorable Newton Atterbury:

Legislation supplementing this constitutional provision has been enacted and now appears as Section 476.400, et seq., RSMo 1949.

Section 476.440 specifies the amount of compensation to a Judge or Magistrate retired under this constitutional provision. This section reads as follows:

"476.440. Retirement pay for judge or magistrate

"A judge or magistrate retired from office by the action of such committee shall receive from the state, county or municipality legally obligated to pay his salary one-half his regular compensation until the end of his term of office."

(Underscoring ours.)

The Supreme Court of Missouri has also described certain rules under this constitutional provision by Rule 12, "Rules of Procedure of the Committee on Retirement of Judges and Magistrates." Rule 12.07 requires that the order of retirement state that: "* * * he receive one-half his regular compensation until the end of his term of office, * * *."

The salary of Circuit Judges was increased by the Legislature in 1951 to the amounts listed in Section 478.013, V.A.M.S. The salary of Circuit Judges was further increased by the 67th General Assembly in Senate Bill No. 232. Said Bill being duly enacted and approved by the Governor May 27, 1953. Said Bill reads as follows:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. Section 478.013 of an act of the 66th General Assembly found at Laws of Missouri, 1951, at page 430, approved January 4, 1952, is hereby repealed and one new section enacted in lieu thereof to be known as section 478.013, and to read as follows:

"478.013. From and after the effective date of this section, each judge of the circuit court of a judicial circuit composed of a single county or city which

Honorable Newton Atterbury:

now has or may hereafter have more than two hundred thousand inhabitants, shall receive an annual salary of fourteen thousand dollars, eleven thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or city composing said circuit; each judge of the circuit court of a judicial circuit composed of a single county which now has or may hereafter have more than seventy-five thousand inhabitants and less than two hundred thousand inhabitants, shall receive an annual salary of twelve thousand two hundred dollars, eleven thousand dollars of which shall be paid by the state out of the state treasury and one thousand two hundred dollars by the county composing said circuit. Each judge of a judicial circuit composed of two or more counties within which circuit any part or portion of a city is located which city now has or may hereafter have more than two hundred thousand inhabitants shall receive an annual salary of twelve thousand two hundred dollars, eleven thousand dollars of which shall be paid by the state out of the state treasury and one thousand two hundred dollars of which shall be paid by the counties composing such circuit in proportion to their population and all other judges of the circuit courts of this state shall each receive an annual salary of eleven thousand dollars, payable by the state out of the state treasury. No circuit judge shall practice law or do a law business nor shall he accept, during his term of office, any public appointment or employment for which he receives compensation for his services."

It is to be noted that neither of the above-quoted statutes increasing the salary of Circuit Judges mention whether such increases would be applicable to those Circuit Judges retired under Article V, Section 27, possibly, because retirement under that provision has been infrequent.

Honorable Newton Atterbury:

There are no cases on this specific point, nor any which would indicate the answer to our question, neither has an examination of the proceedings of the Constitutional Convention, 1944, disclosed any discussion on this particular point. It is, therefore, necessary for us to determine the meaning of this provision purely upon the basis of the language used, bearing in mind that the over-all intent of this provision was to provide a method for removing permanently disabled Judges which would nevertheless not work undue hardship upon the Judge at the time of his disability. The language of the Constitution of the supplemental legislation and of the Supreme Court Rule is that the retired Judge shall receive one-half his regular compensation until the end of his term of office. This appears to mean one-half of the amount of salary to which he would be entitled were he actively discharging the duties of his office. It would be arbitrary and unjustified by the language of the retirement provisions to set the compensation of a retired Judge at one-half of the amount of his salary at the time of his retirement.

CONCLUSION

It is, therefore, the opinion of this office that a Circuit Judge retired under Article V, Section 27, Constitution of Missouri, 1945, is entitled to receive one-half of the amount of what would be his present salary were he not retired and remained in office, rather than one-half of his salary at the time of his retirement. Such retired Judges are entitled to the benefits of any increase of salary of Circuit Judges made after their retirement, but before the end of their term of office.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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