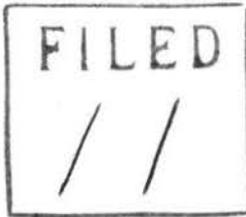


PROSECUTING ATTORNEYS: Effective date of H.B. 160 is August 29, 1953. In computing salary of prosecuting attorney in 3rd and 4th class county, determine the base salary; add 25% of base salary; add 25% of this figure; add \$600.00.

SALARIES:



June 15, 1953

Honorable C. Dudley Brandon
Prosecuting Attorney
Daviness County
Gallatin, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"I am advised that legislation has recently been passed and signed by the Governor on or about May 13th which required Prosecuting Attorneys of third and fourth class Counties to investigate Judicial Parole Applicants, and for such additional services, provided for a \$600.00 per year salary allowance (\$50.00 per month). Would you kindly advise as to whether this legislation contained an emergency clause and was thus effective May 13th, or what date such legislation is effective?

"Also, I would appreciate receiving your interpretation as to the proper computation of Prosecuting Attorney salaries in Counties of third and fourth class in view of this new legislation. The new legislation and the following three sections apparently must be construed for a determination of this question: 56.280, 56.290, 56.300. The manner in which these four salary provisions are interpreted will greatly vary the total salary received.

Honorable C. Dudley Brandom

"For example: In Daviess County, where the population is in the category between 11,000 and 12,500, the salary variation, depending upon method of computation, would be per annum: \$2475.00 or \$2625.00 or \$2812.50. At quick glance at the wording of these Sections, it would appear that 56.280 and 56.290 would first be computed together, then possibly the new legislation of \$600.00 added, and then 56.300 computed on top of that, or it is possible that the new legislation and 56.280 are first computed together since such name specific fixed and set amounts, and then 56.290 and 56.300 are thereupon computed."

Your first question relates to the effective date of legislation requiring prosecuting attorneys in third and fourth class counties to investigate judicial parole applications, and providing compensation of \$600.00 per annum therefor. Such legislation was embodied in House Bill No. 160, which was passed by the Legislature without an emergency clause, and which will therefore become effective 90 days after final adjournment of the Legislature. Since the Legislature finally adjourned on May 31, 1953, House Bill No. 160 will become effective on August 29, 1953.

Your next question is regarding the proper method of computing the salaries of prosecuting attorneys in third and fourth class counties in view of House Bill No. 160.

As you state, Section 56.280, RSMo 1949, sets forth the base salary which prosecuting attorneys in third and fourth class counties are to receive. That salary, in a county in your population bracket, is \$1200.00 per year. Under Section 56.290, RSMo 1949, as ~~alleged~~ compensation for juvenile court services, "The prosecuting attorney in counties of the third and fourth class, in addition to the compensation provided in section 56.280, shall receive an amount equal to twenty-five per cent of the annual salary provided in section 56.280 * * *." This, in your case, would be 25% of \$1200.00, which would be \$300.00, which, added to the \$1200.00 base pay, would be a total of \$1500.00.

Honorable C. Dudley Brandom

Section 56.300, RSMo 1949, assigns additional duties to prosecuting attorneys in relation to coroners' inquests, and provides that "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 per cent 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."

It will be noted that the above quoted portion of Section 56.300 uses the term "salary and fees" as being the basis upon which the 25% set forth in Section 56.300 is to be calculated. The use of the word "fees" in this respect is, we feel, somewhat confusing. Section 56.300, supra, lists numerous services for which a prosecuting attorney shall be allowed a "fee." Section 56.340, RSMo 1949, provides that at the end of each month the prosecuting attorney shall pay over to the county treasurer all of these "fees", retaining none of them for himself. We feel quite sure that it was not the legislative intent that the 25% provided for in Section 56.300 be computed upon the basis of the base salary and these "fees", none of which are retained by the prosecuting attorney. We feel rather that reference is made to Section 56.290, supra, which uses the word "compensation" and not "fees". We believe that the same is true of Section 56.300, supra, which uses the word "compensation".

So far the situation appears to be clear. What is not so clear is whether, to the \$1500.00 which you have in salary by reason of Section 56.280 and 56.290, supra, is added the \$600.00 per annum provided for by House Bill No. 160, which would be a total of \$2100.00, to which would be added 25% of \$2100.00 as provided by Section 56.300, supra, which would be a total of \$2625.00, or whether the 25% provided for by Section 56.300 should be taken of \$1500.00, which would be \$375.00 added to \$1500.00, a total of \$1875.00, to which would be added the \$600.00 provided by House Bill No. 160, for a total of \$2475.00. We believe that the latter method is the proper manner of calculation.

CONCLUSION

It is the opinion of this department that the effective date of House Bill No. 160 is August 29, 1953.

It is the further opinion of this department that in comput-

Honorable C. Dudley Brandom

ing the salary of a prosecuting attorney in a third or fourth class county, the following procedure should be followed: Determine the base salary according to population as set forth in Section 56.280, RSMo 1949; add to this base salary 25% of the base salary as provided by Section 56.290, RSMo 1949; to this figure add 25% of the figure, as provided by Section 56.300, RSMo 1949; to this figure add \$600.00 as provided by H. B. 160.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON *wrote in name*
Attorney General

HPW:lw

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July 3, 1957

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