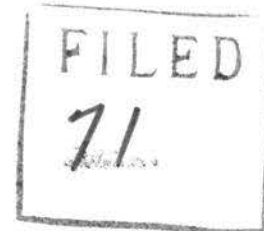


COUNTY DISTRICT JUDGES OF
CLASS THREE COUNTIES:
COMPENSATION:

A county district judge elected at the November 4th, 1952, general election is entitled to compensation set forth in Section 49.110, Laws Mo. 1951, p. 373; the presiding judge elected on the same date to fill out the unexpired term of his predecessor not entitled to the increased compensation mentioned in Section 49.110, supra.

January 29, 1953

Mr. Walter W. Pierce
Prosecuting Attorney
Bates County
Butler, Missouri



Dear Sir:

Your recent request for an opinion has been referred to me for answer. Your request is as follows:

"An opinion of the Attorney General is respectfully requested in regard to the compensation allowed by law for judges of the county court of the third class. Also an opinion is respectfully requested whether a presiding judge duly elected on 4 November 1952 to fill out the unexpired term of his predecessor is entitled to the increased compensation under the amended laws."

We believe the statute applicable to the questions asked in your request is Section 49.110, RSMo. 1949, Cumulative Supplement, 1951, which reads as follows:

"49.110. Per diem, mileage and fees of judges in counties of class three--effective date.-- In all counties of the third class in this state, the judges of the county court, from and after the expiration of their present terms of office shall receive for their services the sum of ten dollars per day for each of the first ten days in any month that they are necessarily engaged in holding court and shall receive five dollars per day for each additional day in any month that they may be necessarily engaged in holding court, and shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court. The per diem compensation herein fixed shall be paid at the end of each month and the mileage compensation shall be paid at the end of each month on presentation of a

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bill, by each of the respective county judges setting forth the number of miles necessarily traveled; provided, however, that this increase in compensation shall not become effective during any county judge's present term of office."

This statute was passed by the Legislature and approved by the Governor on January 4, 1952, and the statute became effective on March 18, 1952, and would make the compensation, that is, the compensation, and mileage set out in the above statute, the compensation allowed by law for the judges of the county court of the third class who are elected from districts at the November, 1952, election.

In regard to your request about the presiding judge duly elected on the fourth of November, 1952, to fill out the unexpired term of his predecessor, it is our opinion that he is not entitled to the increased compensation under the amended law but is only entitled to the salary that his predecessor received as the above statute distinctly states:

"* * *Provided, however, that this increase in compensation shall not become effective during any county judge's present term of office."

Further, the Missouri Constitution, 1945, Article VII, Section 13, states as follows:

"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."

As you see, the quoted part refers to term of office, which term would normally have run through the year 1954 and not to the individual. Our reason for holding that the present duly elected presiding judge is only filling out his predecessor's term and for authority we cite *Thornberry v. City of Campbell*, 274 S.W. 847, where at page 848, the court states:

"* * *While we have considered the proposition from the standpoint of a possible increase in salary, under the statute the same reasoning would apply to a decrease. But the term is fixed and the statute preventing a change in compensation is not, in our opinion, personal to the then occupant of the office, but applies to any subsequent holder of the office during the same term. * * *"

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CONCLUSION

It is, therefore, the opinion of this office that Section 49.110, Laws Missouri, 1951, p. 373, sets the compensation and mileage of county district judges in counties of class three, they being elected at the November 4th, 1952, general election; that the presiding judge elected at the November 4th, 1952 election as a successor to fill out the unexpired term of his predecessor is not entitled to the compensation and mileage provided in such bill during the remaining two years of his term of office, but will during such period receive the compensation and mileage provided in Section 49.110 RSMo. 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. A. Bertram Elam.

Yours very truly,

JOHN M. DALTON
Attorney General

ABE:mw