

OFFICERS: CONSTITUTIONAL LAW: When county changes classification from
INCREASED COMPENSATION DURING 4 to 3 on Jan. 1, 1953, incumbent
TERM NOT VIOLATIVE OF CONSTI- officers to receive compensation allowed
TUTION: WHEN: by statute to officers of 3rd class
counties. Greater compensation not an
increase during officer's term in violation
of Art. VII, Sec. 13, of Constitution.

January 29, 1953



Honorable Curt M. Vogel
Prosecuting Attorney of
Perry County
Perryville, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which has been greatly clarified by the later letter. The inquiry has been restated in said letter, and reads in part as follows:

"When Perry County became a third class county on January 1, 1953, are the salaries and other compensation of the following officers based on the laws applicable to fourth class counties or third class counties;

"(1) County Clerk, Circuit Clerk, Treasurer, Collector, and Presiding Judge who took office January 1, 1951.

"(2) Assessor who began his term 1 August 1949.

"(3) County School Superintendent who began her term on July 1, 1951.

"(4) All other county officers (except Probate and Magistrate Judge) who took office January 1, 1953.

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"We request your opinion as to whether all these officers will receive compensation as any other third class county officers or whether the officers who took office prior to January 1, 1953, are prevented from receiving any increase in compensation because of the provisions of Article VII, Section 13, of the Constitution of Missouri, 1945."

The constitutional provision referred to above prohibits an increase in compensation during an officer's term, and reads as follows:

"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."

Statutes provide the amount of compensation that shall be paid to officers of each of the four classes of counties in Missouri, and while we find it unnecessary to our discussion herein to name the different officers and the amount of compensation allowed to each in third and fourth class counties, it may be stated generally that such compensation varies according to the class of county and its population. The larger the population and the lower the classification the greater will be the amount of each officer's compensation.

In the instant case when Perry County became a third class county on January 1, 1953, the officers whose terms began on that date would unquestionably be entitled to the compensation allowed by law to officers of a third class county. However, with reference to the more important part of the inquiry, a more difficult question is asked, namely, as to whether the incumbent officers of Perry County, whose terms began prior to January 1, 1953, will be entitled to the compensation allowed to officers of third class counties, and whether this greater compensation, if paid to such officers, would amount to an increase in compensation during their respective terms, would be in violation of above quoted constitutional provision.

This question cannot be properly answered without a consideration as to when the terms of such officers began with reference to the effective dates of the statutes regulating the compensation of officers of third class counties. In the event such laws were in existence in their present forms prior to the date when such officer's terms began, and no change allowing greater compensation to be paid has been effected since the beginning of the terms of the Perry County officers, then it would appear that the mere passing from class four to class three would

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be immaterial, and that said officers are entitled to the compensation allowed by law to officers of third class counties.

In this connection we call attention to the case of State ex rel. Moss v. Hamilton, 303 Mo. 313, in which a similar question relating to an increase in compensation of a circuit clerk was raised. At. l.c. 313, the court said:

"Relator's term began on January 1, 1919, and ended on December 31, 1922. No law was passed between those dates which increased his salary. The whole difficulty, if there be difficulty in the case, arises out of the fact that clerks of circuit courts are not elected at Presidential elections, but at what we call the off-year elections, whilst the Act of 1915 fixed the method of determining the salary by Presidential election dates and data. Were our circuit clerks elected in Presidential years, there would not be before us the peculiar and rather difficult question we have in the instant case. This Act of 1915 was in effect when relator was elected. Under it relator's salary was fixed for his whole term, but not in named dollars and cents for the whole term. The effect of this Act of 1915, was to say to relator, Your salary shall be determined upon the Presidential vote of 1916, until there is another Presidential election, at which time your county may be in a lower or a higher class, according to the population indicated by the Presidential vote. The salary, in amount, was fixed by law as to relator's office in any event. If his county was not subjected to a change of class, his salary was not changed. If his county (by a decreased population) dropped to a lower class, his salary was fixed, and was fixed before his election, although the change of class might give him a different amount. So too if his county increased in population and thereby passed to a higher class, the existing law (that in force at the time of his election) fixed for him a salary. True it was higher, but it was definitely fixed at the date of his election. If the Act of 1915 had said that the Circuit Clerk of Crawford County elected in 1916 shall receive \$1600 per year for the first two years, and \$1950 per year for the last two years of the term, there would be no question. Sec. 8 of Article 14 of the Constitution could not be invoked, because the salary would not be either increased or decreased during the term. To my mind the

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Act of 1915 as it now stands is no nearer a violation of Section 8 of Article 14 of the Constitution, than the supposed law. The law-makers knew the Presidential elections years, and with this knowledge classified the counties as to salaries, and provided that such salaries should be determined by the last previous Presidential vote. The salary of each class was fixed, and, as said, no subsequent law has changed the fixed salaries. The mere fact that a county passed from one class to the other does not deprive the holder of the office of the salary fixed by law, and fixed, too, at a time long prior to relator's election. In our judgment Section 8 of Article 14 of the Constitution does not preclude a recovery by relator. This because the salary was fixed by law before his election, and no law since enacted has changed it, except as we may hereafter note. * * *

"The Act of 1915 (Sec. 10995, R.S. 1919) was amended by Act of April 1, 1921, (Laws 1921, p. 607), but as learned counsel for respondents does not treat this amendment as affecting the case, we shall not further note it. We mention it here, because we made reference to a subsequent amendment of the original act in a previous point. It was this amendment in 1921 to which we referred."
(Underscoring ours.)

From a consideration of the statutes concerning the election, compensation, and time fixed for the beginning of the terms of each of the officers of third class counties it appears that all such statutory provisions were in existence prior to the beginning of the terms of the incumbent officers of Perry County mentioned in the opinion request, and that there has been no change in said statutes which attempts to increase the compensation of officers of third class counties during their terms of office.

In the absence of such statutory changes, and in view of the holding in *Moss v. Hamilton*, it is our thought that the officers of Perry County, whose terms began prior to January 1, 1953, when the class of the county passed from four to three, would be entitled to the compensation allowed by statute to officers of class three counties, and that such increased compensation would not be an increase during the terms of such officers in violation of Article VII, Section 13, of the Missouri Constitution of 1945.

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CONCLUSION

It is therefore the opinion of this department that when the classification of a county changes from four to three on January 1, 1953, the incumbent officers are entitled to the compensation allowed by the statute to officers of third class counties and that such greater compensation is not an increase in compensation during the terms of such officers in violation of Article VII, Section 13 of the Missouri Constitution of 1945.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

PNC:hr