

SENATORIAL APPORTIONMENT
COMMISSION:
COMPENSATION OF MEMBERS:

Under provisions of Article III, Section 7, Constitution of Missouri, member of Senatorial Apportionment Commission shall be paid fifteen dollars a day from effective date of his appointment and qualification, until date commission completes assignment, but total compensation cannot exceed one thousand dollars. If commission's assignment is not completed and it is discharged at end of six month's period provided in section, a commissioner shall be paid fifteen dollars a day from effective date of his appointment and qualification, but total compensation cannot exceed one thousand dollars.

May 31, 1961



Honorable William E. Hilsman
Senator Third District
State Capitol
Jefferson City, Missouri

Dear Sir:

This office is in receipt of your recent request, reading as follows:

"The Senatorial Apportionment Commission appointed by the Governor is entitled to Fifteen Dollars (\$15.00) 'per day' according to Article three (3), Section seven (7) of the Constitution. Your opinion is requested as to whether this means that this amount is payable on each day from the date they are appointed and qualified until they have completed their assignment. It is my understanding that this has been the established customs in the Constitutional Convention and other similar bodies."

Article III, Section 7, of the Constitution of Missouri, provides for the appointment of a senatorial apportionment commission, the method of selection of members, their compensation, duties, and the effect of their action or inaction. Said Section reads as follows:

"Within sixty days after this Constitution takes effect, and thereafter within sixty days after the population of the state is reported to the President for each decennial census of the United States, the state committee of each of the two political parties casting the highest vote for governor at the last preceding election shall submit to the governor a list of ten persons, and within thirty days thereafter the governor

Honorable William E. Hilsman

shall appoint a commission of ten members, five from each list, to reapportion the thirty-four senators and the numbers of their districts among the counties of the state. If either of the party committees fail to submit a list within such time the governor shall appoint five members of his own choice from the party of such committee. Each member of the commission shall receive fifteen dollars a day, but not more than one thousand dollars. The commission shall re-apportion the senators by dividing the population of the state by the number thirty-four, and the population of no district shall vary from the quotient by more than one-fourth thereof. The commission shall file with the secretary of state a full statement of the numbers of the districts and the counties included in the districts, and no statement shall be valid unless approved by seven members. After the statement is filed senators shall be elected according to such districts until a re-apportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of any such commission it shall stand discharged and the senators to be elected at the next election shall be elected from the state at large, following which a new commission shall be appointed in like manner and with like effect. No such reapportionment shall be subject to the referendum.

The above quoted section requires the commission to reapportion the senators by dividing the population of the state by the number thirty-four. The population of no district shall vary from the quotient more than one-fourth. The commission is also required to file a full statement of the number of the senatorial districts with the names of the counties included in such districts. Said statement shall be approved by at least seven commissioners, otherwise it is invalid. After the statement has been filed, senators shall be elected according to the districts set out in the statement, until a subsequent reapportionment will have been made in the same manner as provided in the section.

If the statement has not been filed within six months of the time fixed for the appointment of the commission, it

Honorable William E. Hilsman

shall stand discharged at the end of that period, and those senators to be elected at the next election, shall be elected from the state at large, following which a new commission shall be appointed in the same manner.

From Section 7 supra, it appears that the commission is granted a period of six months from the date fixed for appointment of the commission, in which to complete its work and file a statement with the Secretary of State. At the end of the six-month's period the commission is automatically discharged if it has not filed the statement with the Secretary of State.

It is apparent the section does not require the commission to take the full six-month's period to complete its work, but it is authorized, and may in its discretion, complete its work and file the statement in less than the six month time allowed it. In that event, upon filing of the statement the commission will also be discharged, since there is no reason for it to exist any longer.

We come now to the "compensation" portion of said Section 7, a construction of which has been asked in the opinion request. This portion of the section reads: "Each member of the commission shall receive fifteen dollars a day, but not more than one thousand dollars."

Earlier portions of the section were expressed in clear and concise language, from which the intended meaning of the framers of the constitution could readily be ascertained, consequently, the ordinary rules of statutory construction did not apply and no reference was made to them in our previous discussion. However, this is not true regarding the meaning of said "compensation" portion of the section. While expressed in plain language, the intended meaning is not clear and it is believed necessary to employ such rules of statutory construction which may be applicable in an effort to determine, with any degree of accuracy the intended meaning of this part of the section.

In the case of *State v. Atterbury*, 300 S. W. 2d 806, the Supreme Court of Missouri held that the constitution is subject to the same rules of construction as other laws, with due regard to certain matters therein stated, and at l. c. 810, said:

"The constitution, in general, is subject to the same rules of construction as other laws,

Honorable William E. Hilsman

due regard being given to its broader scope and objects, as a charter of popular government, and the intent of the organic law is the primary object to be attained in construing it. State ex rel. Harry L. Hussman Refrigerator & Supply Co. v. City of St. Louis, 319 Mo. 497, 5 S. W. 2d 1080, 1084 [4]. * * * "

The general rule with reference to the payment of compensation to public officers is found in C.J.S., Vol. 67, Officers Section 83, and reads in part as follows:

"Where provision is made for compensation for a public office, the right to the compensation is an incident to the office or to the right or title thereto, and the person rightfully holding the office is entitled to the compensation attached thereto. In general, the right of compensation is not an incident of the exercise of the functions or the performance of the duties of the office; hence, in the absence of constitutional or statutory provision to the contrary, the fact that officers have not performed the duties of the office does not deprive them of the right to compensation, provided their conduct does not amount to an abandonment of the office.
* * * "

Again in the case of Nodaway County v. Kidder, 129 S. W. 2d, 857, the court gave the general rule, regarding the payment of compensation to public officers, and applied same to the factual situation involved in the case. At l. c. 860, it said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v.

Honorable William E. Hilsman

McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

From said section 7 supra, it clearly appears that public officers, known as commissioners of the senatorial apportionment commission, are to be appointed in the manner provided, to perform the duties therein specified. After appointment of the commission, its duties may be completed any time within six months from the date fixed for its appointment. At the end of that period, if the commission is still in existence, it is automatically discharged.

It also appears from the section, that commissioners are to receive compensation at the rate of fifteen dollars a day, although the beginning and ending dates are not indicated. Such payments are not conditioned upon the performance of any duties, nor is a commissioner required to meet certain preliminary requirements, such as satisfactory proof that he was present at each session of the commission, to entitle him to fifteen dollars for each day's attendance. The only limitation we find in the section is that each commissioner cannot be paid more than one thousand dollars, and it follows that such limitation would not permit him to receive fifteen dollars a day from the date fixed for appointment of the commission, until the automatic discharge of the commission, six months later.

We understand your inquiry to be primarily concerned with the beginning date of the fifteen-dollar a day payments to a commissioner.

As indicated above, the beginning and ending dates for such payments, are not given, and because of this omission, it is necessary for us to apply the general rules of statutory construction, given in above cited legal authorities, in order to determine the meaning of the "compensation portion" of Section 7, supra.

From the quotation of C.J.S. supra, we find that compensation is an incident to public office and the person

Honorable William E. Hilsman

rightfully (legally) holding the office is entitled to any compensation attached to it.

From *Nodaway County v. Kidder*, supra, we learn that a public officer is deemed to render official services gratuitous unless compensation for same has been legally provided. If compensation is allowed an officer by statute, in a particular mode or manner, he is entitled to compensation paid in the statutory mode or manner, and to no other. It is incumbent upon an official to point out the statute authorizing payment of compensation to him.

Only a commissioner who has been legally appointed to such office is entitled to the constitutional compensation. He has title to the office, and can legally hold the same when his appointment and qualification have become effective. From this date he can be paid compensation at the rate of fifteen dollars a day, until the commission has completed its assignment and filed the statement with the Secretary of State, if such duties will have been accomplished any time within the six-month's period allowed the commission or, in the alternative, each commissioner can be paid fifteen dollars a day from the effective date of his appointment and qualification, until the total payments amount to one thousand dollars. When that amount will have been paid to a commissioner, he cannot be paid any further compensation, and thereafter his services will be gratuitous until the commission has completed its assignment and ceases to function, or until the commission will have been automatically discharged at the end of the six-month's period.

CONCLUSION

Therefore, it is the opinion of this office, that under provisions of Article III, Section 7, Constitution of Missouri, a member of the Senatorial Apportionment Commission shall be paid compensation at the rate of fifteen dollars a day from the effective date of his appointment and qualification, until the date when the commission has completed its assignment, but total compensation paid to a commissioner cannot exceed one thousand dollars.

It is further the opinion of this office that although the commission's duties are not completed, and the commission is discharged at the end of the six-month's period provided by the section, that from the effective date of his appointment and qualification, a commissioner shall be paid compensation

Honorable William E. Hilsman

at the rate of fifteen dollars a day, but his total compensation shall not exceed one thousand dollars.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

PNC:vm