

OFFICERS:  
CIRCUIT CLERKS:  
COMPENSATION:  
TERM OF OFFICE:  
CONSTITUTIONAL LAW:

A person elected to fill an unexpired portion of the term of a circuit clerk is not entitled to an increase in compensation pursuant to a statute enacted during the term of office but before his election thereto. The increase does not become effective until the expiration of such term.

May 26, 1961



Honorable William W. Milfelt  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Mr. Milfelt:

Under date of April 28, 1961, you requested an opinion as follows:

"The Circuit Clerk of this County died shortly after taking office in January, 1959. D. J. Mahn was appointed Circuit Clerk following the death of Mr. Arch Vreeland. In the past election in 1960, Mr. J. Bryan Jones was elected to fill the unexpired term of Mr. Arch Vreeland.

"Also in 1960 we became a second class county.

"The question now involved is this, is Mr. J. Bryan Jones a hold over officer within the meaning of the statute which would prohibit him from being entitled to the increase under Section 483.315 as amended by the Session Laws of 1959, Senate Bill No. 196 Section 1.

"We would appreciate an early reply so that his salary might be straightened out with the least personal inconvenience to himself and the County Court."

Section 13, Article VII of the Constitution of Missouri provides as follows:

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"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."

This section clearly and unambiguously prohibits any increase in the compensation of an officer "during the term of office."

In *Smith v. Pettis County*, 345 Mo. 839, 136 SW 2d 282 it is held; "'A term of office' uniformly designates a fixed and definite period of time." Section 483.015, RSMo 1959, fixes the term of office of circuit clerks at four years, commencing on the first Monday in January next ensuing their election. Thus, by statute the term of office of circuit clerk is the fixed and definite period of four years.

Section 483.020, RSMo 1959, provides that when any vacancy shall occur in the office of any clerk so elected, the Governor shall fill such vacancy by appointing some eligible person who shall serve until next general election "at which time a clerk shall be chosen for the remainder of the term." This statute clearly indicates that the length of the term is unaffected by the vacancy, and that in the event of such vacancy, the successor is chosen for the same term but only for the unexpired portion thereof.

In addition to the foregoing special statute applicable to clerks alone, there is a somewhat similar general statute which pertains to filling vacancies in any state or county office with certain exceptions not here relevant, namely Section 105.030, RSMo 1959. This statute also provides for an interim appointment by the Governor followed by the election of a person "to fill the unexpired portion of the term".

In *Thornberry v. City of Campbell*, 274 SW 847, the court had for construction a statute providing that an officer's salary shall not be changed "during the time for which he was elected or appointed." A city marshal who had been elected to the office resigned and the question presented was whether or not his successor was affected by an ordinance passed prior to the resignation but after the term commenced, which decreased the amount of compensation payable. The court held that such change could not become operative "until the term of office fixed by statute has expired, whether the person occupying the office at the beginning of the fixed term continues in office or not." The court held as follows:

"But the term is fixed and the statute prohibiting a change in compensation is

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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."

We believe that the constitutional provision quoted above is even more explicit than was the statute construed in the Thornberry case.

In State ex rel Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106, the court construed the provision of the 1875 Constitution prohibiting increases in compensation of an officer during "his" term of office as referring to the term fixed by statute and not to the individual who happened to be the incumbent. That case involved an officer who had been reelected to a second term. The court ruled as follows:

"\* \* \* Each official term stands by itself. The constitutional provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a term by statute only, and in no wise refers to the individual who may incidentally happen to be the incumbent for more than one term. \* \* \*"

It is significant that the phraseology of the constitutional provision has been changed. Section 8, Article XIV of the Constitution of 1875 prohibited any increase in compensation of an officer during "his" term of office. The 1945 constitution prohibits the increase during "the" term of office. It would appear that the intent of this change was to avoid any possibility that our courts (as have the courts of some states) might construe the constitutional provision as applying to the person filling the office rather than to the term of office, irrespective of how many persons might hold such office during the fixed term.

The term of office of the Circuit Clerk is fixed by statute at four years. In our opinion, no law providing for an increase in compensation, effective after the commencement of said term, may validly apply to any incumbent who holds such office during any portion of such term.

#### CONCLUSION

It is the opinion of this office that the increase in compensation provided for by Section 483.315, RSMo 1959, does not become effective until the expiration of the term of office

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to which the original incumbent was elected; and that a person elected to fill the unexpired portion of such term is not entitled to any increase in compensation pursuant to a statute enacted during the term of office but before his election thereto.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

JN:ms