

Opinion No. 401, Answered by Letter
(There is another letter pertaining to this
opinion request)

December 7, 1961



Honorable Charles D. Trigg
Comptroller and Budget Director
Jefferson City
Missouri

Dear Mr. Trigg:

You have requested the advice of this office with respect to the basis upon which the salary of the incumbent magistrate of Stoddard County is now to be determined, together with the effective date of any changes in such salary.

Section 23, Article V of the Constitution provides that judges of magistrate courts shall be selected for terms of four years. Section 482.010, RSMo 1959, specifically provides that magistrates shall hold their offices for a period of four years. Section 12, Article VII of the Constitution provides that except as otherwise provided in the Constitution, all officers shall hold office for the term thereof.

We find no provision in the Constitution which provides that the term of a magistrate shall automatically cease in the event of a decrease in the population in the county in which he was elected. Section 18, Article V of the Constitution which provides that in counties of 30,000 or less, the probate judge shall be judge of the magistrate court, does not operate to abolish the office held by the incumbent magistrate, even if it is also true that the incumbent probate judge is now an ex officio magistrate. In our opinion the incumbent magistrate is entitled to hold his office for the full term for which he was elected and to be compensated according to the statutory classification applicable to his county.

The only statutory provision for payment of salaries to magistrates is Section 482.150, RSMo 1959. Prior to the effective date of the 1960 census the magistrate of Stoddard County was paid

Honorable Charles D. Trigg

under the provisions of paragraph 1(5) of said section, which is applicable to counties having a population of more than 30,000 inhabitants but not more than 40,000 inhabitants. As of the effective date of the 1960 census the population of Stoddard County no longer exceeds 30,000 inhabitants but is now 29,490. The assessed valuation of Stoddard County within the meaning of Section 482.150, RSMo 1959, is \$33,779,371. The only provision for payment of salaries to magistrates in counties of the classification in which Stoddard County now falls is contained in paragraph 1(4) which by its terms applies to all counties "now or hereafter" having a population of more than 15,000 but not more than 30,000 inhabitants with an assessed valuation of more than \$26,000,000. In the opinion of this office dated January 26, 1961, to the Comptroller and Budget Director we ruled that incumbent magistrates salaries must be increased or decreased as of January 1, 1961, the effective date of the 1960 census if the application of the statutory classification in effect at the commencement of their terms so results. Accordingly the salary rate of incumbent magistrate of Stoddard County as of January 1, 1961, became \$7200.00. Effective as of October 13, 1961, the effective date of House Bill No. 281, the salary rate of magistrates in the classification in which Stoddard County now falls has been increased to \$8400.

Yours truly,

THOMAS F. EAGLETON
Attorney General

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