

PROSECUTING ATTORNEYS: Stenographic and clerical help for
SALARY FOR PROSECUTING Prosecuting Attorneys of third and fourth
ATTORNEYS STENOGRAPHER: class counties authorized by Senate Bill
SALARIES AND FEES: 324, 71st General Assembly not under
FEES AND SALARIES: provisions of Article VII Section 13, Mo.
Constitution. County Court has power to
approve or disapprove salaries of such help
fixed by Prosecuting Attorney.

November 10, 1961

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Honorable Paul E. Williams
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Mr. Williams:

We are in receipt of your request for an official opinion
of this office which reads as follows:

"Re: Senate Bill No. 324 71st General Assembly

1. Is the salary of a stenographer or clerk
therein referred to subject to any limitation
such as an office holder's raise during his
term of office?

2. What degree of control does the County
Court have over the Prosecuting Attorney by
reason of the words "shall be fixed by the
Prosecuting Attorney with the approval of
the County Court".

3. Does said act authorize the Prosecuting At-
torney to employ more than one person, and if
more than one what are the salary limitations?

Your opinion in these matters will be significant
to the operation of this office. Please advise."

Senate Bill No. 324, 71st General Assembly reads as follows:

"Section. 1. The prosecuting attorney in counties
of the third and fourth class may employ such
stenographic and clerical help as may be necessary
for the efficient operation of his office. The
salary of any stenographer or clerk so employed
shall be fixed by the prosecuting attorney with
the approval of the county court to be paid by
the county but such salary shall not exceed twenty-
seven hundred dollars per year in third class
counties and twelve hundred dollars per year in
fourth class counties."

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In answering the first question posed in your request we will assume that you have reference to Article VII, Section 13 of the 1945 Constitution of Missouri which provides 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."

The stenographers and clerks provided for by Senate Bill 324 are not within the provision of this last quoted section. To come within this provision a person must be either a state, county, or municipal officer. The people here involved are obviously not state or municipal officers, inasmuch as they are hired by a county official, the prosecuting attorney, they are not county officials. To be an "officer" one must have been delegated some substantial part of the sovereign power, which he must exercise independently, with no control over him other than the law. State ex rel Webb v. Pigg (1952) 363 Mo. 133, 249 S.W. 2d 435. Stenographers and clerks hired by a prosecuting attorney to assist in the operation of his office, do not, of course, meet this test.

Even if such people were considered "officers" under Article VII, Section 13 of the Missouri Constitution this section would still not apply to them. First, Senate Bill 324 does not provide them with a definite term of office; the absence of this factor exempts them from the provisions of the section. State ex rel Rumbold v. Gordon (1911) 238 Mo. 168, 142 S.W. 315. Second, this bill provides statutory authority for the compensation of clerical and stenographic assistants to prosecuting attorneys in third and fourth class counties for the first time. A constitutional provision prohibiting a change of compensation after an election or appointment during the term of an officer does not apply where, prior to such time, no salary or compensation has been fixed for such office. State v. Nolte (1943) 351 Mo. 271, 172 S.W. 2d 854.

We are, therefore, of the opinion that Article VII, Section 13 of the 1945 Missouri Constitution does not apply to stenographic and clerical assistants employed by a prosecuting attorney under authority of Senate Bill 324.

We come now to the second question contained in your request which reads as follows:

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"2. What degree of control does the County Court have over the Prosecuting Attorney by reason of the words 'shall be fixed by the prosecuting attorney with the approval of the County Court'."

The degree of control exercised by the County Court must be determined by the interpretation to be given the word "approval". There are two possible interpretations. The giving of approval has been said to be a mere ministerial act. *Better Built Homes and Mortgage Company v. Nolte* (1923) 211 Mo. App. 601, 249 S.W. 743. On the other hand the giving of approval has been held to require the exercise of judgment and discretion. *Baynes v. Bank of Carruthersville* (1938) 118 S.W. 2d 1051. Under the first interpretation as applied to Senate Bill 324 the County Court would have no power to disapprove a salary of a stenographic or clerical assistant fixed by a prosecuting attorney. Under the second interpretation the county court would have the power to disapprove any salary fixed by a prosecuting attorney.

We believe that the legislative intent was that the word "approval" be given the second interpretation. The County Court is charged by the Missouri Constitution with the management of all county business, Article VII, Section 7, Constitution of Missouri 1945. It must manage the county's fiscal affairs so as to provide ways and means for the county to keep its expenditures within its income, and thereby comply with the constitutional limitations on indebtedness. Article VI, Section 26, Constitution of Missouri 1945. *Bradford v. Phelps County* (1948) 357 Mo. 830, 210 S.W. 2d 996. This duty could not be discharged by the county court if any other county office or any county officer could, without any superintendence by the court, determine the amount of funds to be expended in a particular area of the county government.

We come finally to the problem of whether a prosecuting attorney may employ more than one person as stenographic or clerical help and what, if he may, the salary limitations are.

The only requirement contained in Senate Bill 324 in regard to the number of persons employed is that the prosecuting attorney may hire such help "as may be necessary for the efficient operation of his office."

A prosecuting attorney may, therefore, employ the amount of people he deems necessary for the efficient operation of

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his office.

The salary limitation stated applies only to individuals. The act says "The salary of any stenographer or clerk so employed . . . shall not exceed \$2700.00 per year in third class counties and \$1200.00 in fourth class counties." This wording clearly means that each stenographer or clerk must be considered separately in regard to both the maximum limitation of their salary and the necessity of acquiring approval of the salary from the county court. If the county court finds that the number of employees hired by the prosecuting attorney is excessive in regard to the county budget it may accordingly limit the salary given to the individual employee.

CONCLUSION

It is therefore the opinion of this office that stenographic and clerical help hired by the prosecuting attorney in third and fourth class counties under the authority of Senate Bill 324, 71st General Assembly are not within the provisions of Article VII, Section 13, Constitution of Missouri of 1945, which prohibits increases in the salaries of public officers during their term of office. It is further our opinion that the county court has the power to disapprove the salaries of such stenographic and clerical help as fixed by the prosecuting attorney. It is also our opinion that the Prosecuting attorney may hire more than one stenographer or clerk as long as the number of employees is necessary for the efficient operation of the office and that the salary limitation thereon must be exercised in regard to each individual employee.

The foregoing opinion, which I hereby approve, was prepared by my assistant Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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