

COUNTIES: COUNTY OFFICERS: Compensation and mileage increases  
MILEAGE: CIRCUIT CLERKS: authorized by 71st General Assembly.  
MAGISTRATE JUDGES:  
MAGISTRATE COURTS:  
SHERIFFS:  
ASSESSORS:  
CORONERS:  
SALARIES, FEES:

December 6, 1961



Honorable James E. Woodfill  
Prosecuting Attorney  
Vernon County  
Nevada, Missouri

Dear Mr. Woodfill:

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

"The County Clerk of Vernon County, Missouri received a letter from the State Auditor in regard to salary increases and also in regard to certain mileage allowance increases.

"He enclosed therewith a schedule of the additional salaries, a copy of which I am enclosing.

"Apparently, from this enclosed list, the only salary increase in Vernon County which would become effective immediately, would be that of the Circuit Clerk. The rest of them would apparently become operative at the beginning of the next term of each office.

"However, there have been inquiries made of the Clerk, and he desired that I write your office to obtain your official opinion in regard to these salary increases and also in regard to mileage increases of officers of the county.

"I imagine you have already had inquiries in this regard, so if you have rendered an official opinion, please send me a copy

Honorable James E. Woodfill

thereof. If you have not rendered an official opinion in this regard, please give me your opinion as to when the salary increases become effective and also as to when the mileage allowance increases of the various officers become effective."

Inasmuch as Vernon County is a third class county with township organization and with a population of 20,540 we will confine our opinion to the compensation and mileage increases voted by the 71st General Assembly to officers of that type of county.

1. Circuit Clerks. Vernon County has separate offices in regard to the Circuit Clerk and Recorder of Deeds. We therefore first direct your attention to the additional compensation granted by Senate Bill 288, 71st General Assembly (Now Section 483.331 RSMo 1959) to such Circuit Clerks. It reads as follows:

"1. In addition to his other duties, the clerk of the circuit court in all counties of the third class wherein the offices of the circuit clerk and recorder are separate shall prepare and deliver to the judge of the circuit court, to the judicial conference and to the committee on legislative research an annual report showing the number of civil, criminal and juvenile cases filed in the court during the preceding year, their disposition, their classification, the number of cases pending at the end of the year and such other information as the judge may require.

"2. For the performance of the duties required by subsection (1), the clerk of the circuit court in counties of the third class shall receive, in addition to all other compensation now provided by law, twelve hundred dollars per annum to be paid out of the county treasury as his other compensation is paid."

Article VII, Section 13, Constitution of Missouri 1945 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."

Honorable James E. Woodfill

Inasmuch as the first paragraph of Senate Bill 288, 71st General Assembly imposes new and additional duties on the Circuit Clerks involved and the second paragraph states that the additional compensation therein authorized is for the performance of the duties stated in paragraph 1, the clerks were entitled to the additional compensation at the time Senate Bill 288 took effect on October 13, 1961. *Mooney v. County of St. Louis* (Mo. Sup. 1956) 286 S.W. 2d 763.

2. Stenographic and Clerical Help of Prosecuting Attorneys.

We enclose a copy of the opinion of this office issued to Honorable Paul E. Williams under date of November 10, 1961, which answers questions relative to the compensation of stenographic and clerical help of Prosecuting Attorneys in relation to Article VII, Section 13, Constitution of Missouri of 1945.

3. Magistrate Judges. The applicable portion of House Bill 281, 71st General Assembly (Now Section 482.150 and Section 482.250 RSMo 1959) reads as follows:

"1. The salaries of all magistrates shall be paid by the state, except that the state shall not pay the salaries of additional magistrates whose offices are created by order of the circuit court as provided for in article V, Section 18, of the constitution; but the districts assigned to such additional magistrates shall be designated as 'additional magistrate districts' and the salaries of such magistrates shall be paid by the county. The annual salaries of magistrates shall be as follows:

\* \* \* \* \*

"(4) In all counties now or hereafter having a population of more than fifteen thousand inhabitants but not more than thirty thousand inhabitants, with an assessed valuation of more than twenty-six million dollars, the sum of eight thousand four hundred dollars;"

Vernon County with a population of 20,540 and an assessed valuation of \$31,829,524 falls within the quoted category.

Section 1, Article V of the constitution of Missouri 1945 reads as follows:

"The judicial power of the state shall be vested in a supreme court, courts of appeals, circuit courts, probate courts, the St. Louis courts of

Honorable James E. Woodfill

criminal correction, the existing courts of common pleas, magistrates courts, and municipal corporation courts."

As can be seen from a reading of this section, Magistrate Courts are vested with a portion of the judicial power of the State of Missouri. Section 24, Article V of the Constitution of Missouri of 1945 reads as follows:

"All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office. Until the end of their present terms probate judges shall continue to receive compensation and clerk hire as now provided by law. The salaries of magistrates shall be fixed by law. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. Judges may receive reasonable traveling and other expenses allowed by law. The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

We enclose copies of opinions of this office issued to Honorable E. G. Armstrong under date of October 4, 1946, and to the Honorable Leslie A. Welch under date of December 29, 1950, which hold that in view of Section 24, Article V, above quoted, there is no constitutional prohibition against increasing the salaries of members of the judiciary during their terms of office. Under the reasoning set forth in those opinions, magistrate judges are entitled to the increased compensation provided for in House Bill 281, 71st General Assembly.

4. Clerks, deputies and employees of magistrate courts.  
House Bill 462, 71st General Assembly now Section 483.490, RSMo 1959, reads in part as follows:

"1. Salaries of clerks, deputy clerks and employees provided for in section 483.485 shall be paid by the state within the limits herein provided upon requisition filed by the judges of the magistrate

Honorable James E. Woodfill

courts; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in section 482.010, RSMo shall be paid by the county as the salaries of such magistrates are required to be paid. The total amount that may be paid by the state in any one year for such clerks, deputy clerks and employees of the magistrate courts in the different counties shall not exceed the following sums:

\* \* \* \* \*

"(6) In all counties now or hereafter having a population of more than fifteen thousand inhabitants but not more than thirty thousand inhabitants, with an assessed valuation of more than twenty-four million dollars, the sum of four thousand four hundred dollars; provided that in all such counties in which the probate court is required by law to be held in more than one place such salaries shall not exceed the sum of six thousand nine hundred dollars."

This bill does not raise the compensation of a specific office or person, but instead raises the total amount which may be paid by the state for all help in the magistrates office. It is the opinion of this office that any individual pay raises which may be given within the total authorized by this section are not subject to the prohibition stated in Section 13, Article VII of the Missouri Constitution. Clerks, deputy clerks, and other employees of magistrate courts are not given a definite term of office; this fact exempts them from the provisions of the last mentioned constitutional provision. State ex rel Rumbold v. Gordon (1911) 238 Mo. 168, 142 S.W. 315.

5. Coroners. The portion of House Bill 533, 71st General Assembly, (Section 58.110 and 58.120, RSMo 1959) which concerns third class counties reads as follows:

"The coroner in all counties of the third class shall receive for his services annually, the following: In counties with a population of less

Honorable James E. Woodfill

than ten thousand, the sum of two hundred and forty dollars; in counties with a population of ten thousand and less than fifteen thousand, the sum of three hundred and sixty dollars; in counties with a population of fifteen thousand and less than twenty thousand, the sum of four hundred and eighty dollars; in counties with a population of twenty thousand and less than twenty four thousand, the sum of seven hundred and twenty dollars, in counties with a population of twenty-four thousand and less than thirty thousand, the sum of nine hundred and sixty dollars; and in counties having a population of thirty thousand and more, the sum of one thousand two hundred dollars."

58.120-

"In each county of the third and fourth classes, the county court shall allow the coroner, payable at the end of each month out of the county treasury, ten cents per mile for each mile actually and necessarily traveled in the performance of his official duties."

Coroners are county officers. Volume 18, C. J. S., Coroners, Section 1, page 288. They are, therefore, within the prohibition of Section 13, Article VII regarding an increase of compensation during their term of office.

Another problem arises in regard to the mileage allowance provided for coroners provided by House Bill 533. Coroners in both third and fourth class counties were given an increase in mileage from five cents to ten cents per mile (the former allowance was authorized by Laws 1945, page 992, Section 1 (a).) Whether coroners of counties of both classifications are entitled to the increased allowance depends on whether such allowance is "compensation" within the meaning of Section 13, Article VII.

Volume 67, C.J.S., Officers, Section 91, page 330 reads in part as follows:

"\* \* \*In a limited sense, mileage may become a part of the compensation of an officer; if the mileage allowance is limited to the amount actually expended in traveling, it cannot add

Honorable James E. Woodfill

anything to the income of the recipient of the salary; but, if the mileage is not so limited, as where a certain amount is allowed for each mile traveled and this amount exceeds the actual mileage charged, the balance above such charge becomes a part of the official income or compensation."

The cases of Reed v. Gallet (1931) 50 Idaho 638, 299 P. 337 and Marioneaux v. Cutler (1907) 32 Utah 475, 91 P. 355 also expressed this principle.

As can be seen from the above quoted bill the amount it provides is a certain amount (10¢) for "each mile actually and necessarily traveled". There is no indication that the legislature intended otherwise. There is no limitation here as is the situation with House Bill 255, 71st General Assembly concerning county judges and their compensation and mileage allowance which provided that the allowance could only be collected when the person seeking it had used his private automobile. We, therefore, are of the opinion that the mileage allowance given to coroners is "compensation" within the meaning of Section 13, Article VII, Missouri Constitution 1945.

6. Township Assessors. House Bill 204, 71st General Assembly, now Section 65.240 RSMo 1959, reads as follows:

"The ex officio township assessor in each township, in counties of the third and fourth classes, which now or may hereafter have township organization, as compensation for his services, shall receive sixty-five cents for each list taken by him; and for each tract of land or town lot assessed by him, and properly entered in the township land book, he shall receive ten cents; and for each entry in the tangible personal property tax book, he shall receive five cents; one-half to be paid by the county and one-half by the state, as now provided by law. All the personal property listed belonging to any one individual, or to husband and wife, or to any company or firm shall constitute only one list and all the land owned by the same person in any one section shall constitute but one tract, and all the land owned by any one person in any one block shall constitute but one lot, as to compensation. The assessor

Honorable James E. Woodfill

in counties of the third and fourth class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book."

The only increase provided by this bill is in regard to the fees received by township assessors for property lists prepared by them; the new fee provided for is a 5¢ increase over what was formerly provided by the old section 65.240 which was taken from A. L. 1953, page 374, Section 1. Such fees are "compensation" under the provisions of Section 13, Article VII. State ex rel Emmons v. Farmer (1917) 271 Mo. 306, 196 S.W. 1106, township assessors presently holding office can not therefore receive the increase during their present term of office

7. County Judges. We are enclosing a copy of an opinion of this office issued to the Honorable J. R. Fritz under date of October 24, 1961, which answers the questions in regard to both increased compensation and increased mileage for county judges of both third and fourth class counties.

8. Sheriffs. Senate Bill 173, 71st General Assembly, now Sections 57.300 and 57.430, RSMo 1959, provides increased mileage for sheriffs. Each section provides for a separate mileage allowance.

The amount authorized by Section 57.300, RSMo 1959, represents an increase of five cents a mile over the old law; Section 57.430 authorizes a three cent per mile increase. Here again arises the question of whether the mileage allowance provided for is "compensation" within the meaning of the constitutional provision with which we are concerned. Section 57.300, RSMo 1959, provides:

"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Fifteen cents for each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held; provided, that such mileage shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip."

It is the opinion of this office that the mileage allowance provided for in this section is not compensation and that sheriffs are therefore presently entitled to it. Section 13, Article VI of the Constitution of Missouri 1945 provides:

Honorable James E. Woodfill

"Compensation of officers in criminal matters- fees. All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Under the provisions of this section, all state and county officers except constables and justices of the peace are to be compensated only by salary for their services with regard to criminal matters, and the provision is further made that fees and charges collected by officers in such matters are to be paid into the General Revenue Fund.

Section 57.410, RSMo 1959, states:

"In all counties of the third and fourth classes, the sheriff shall charge and collect for an on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

The mileage chargeable under Section 57.300, RSMo 1959, must be paid into the county treasury and cannot, therefore, be compensation for sheriffs.

Section 57.430 RSMo 1959, reads as follows:

"1. In addition to the salary provided in sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed ten cents per mile, and actual expenses not to exceed

Honorable James E. Woodfill

ten cents per mile for each mile traveled, the maximum amount allowable to be one hundred dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote."

"2. At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and the places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

It is also the opinion of this office that the mileage allowance provided for in this section is not compensation, and that sheriffs are therefore presently entitled to the increase. This section clearly spells out the legislative intent that the mileage allowance is limited to reimbursement for expenses actually incurred. It provides for payment of actual expenses "not to exceed" ten cents a mile. Under this section, if the actual expenses amount to less than ten cents a mile, then the county court is not authorized to pay the maximum. On the other hand, if such expenses exceed ten cents a mile, the sheriff is not entitled to reimbursement for such

Honorable James E. Woodfill

excess. It is to be noted that under paragraph 2 of Section 57.430, RSMo 1959, an itemized statement must be filed and this statement is referred to in the statute as "claim for reimbursement".

CONCLUSION

It is therefore the opinion of this office that:

(1) The present circuit clerk of Vernon County is entitled to the additional compensation provided by Senate Bill 288, 71st General Assembly.

(2) Magistrate Judges are entitled to increased compensation provided by House Bill 281, 71st General Assembly.

(3) Clerks, deputies and employees of magistrate courts who do not have a definite term of office, are not subject to the provisions of Section 13, Article VII, Constitution of Missouri, 1945.

(4) The coroners of third and fourth class counties who are now in office are entitled to neither the increased compensation nor the increased mileage provided by House Bill 533, 71st General Assembly during their present terms of office.

(5) Township assessors of third and fourth class counties which have township organization who are now in office are not entitled to the increased fees provided by House Bill 204, 71st General Assembly, during their present terms of office.

(6) Sheriffs now in office are entitled to the increased mileage allowances provided by Senate Bill 173, 71st General Assembly, during their present terms.

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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