

(Opinion request No. 183 answered by this letter.)

May 2, 1962

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Honorable George H. Pace
Representative, Marion County
2023 Kingshighway
Hannibal, Missouri

Dear Mr. Pace:

This will reply to your recent letter requesting an opinion concerning the compensation of magistrate judges in Marion and Cape Girardeau counties. We appreciate the analysis which you have made of the pertinent statutory provisions.

In our opinion, the language of paragraph 3 of subsection 1 of Section 482.150 is plain and unambiguous and cannot be construed to apply to Marion and Cape Girardeau counties.

As your letter points out, paragraph 3 relates to counties having a population of more than 15,000 inhabitants but not more than 30,000 inhabitants, with an assessed valuation of \$26,000,000 or less. The method of determining the assessed valuation is set forth in subsection 3 of Section 482.150. Obviously, neither Marion nor Cape Girardeau County comes within the classification as set forth in paragraph 3. The proviso contained in this paragraph, allowing additional compensation, is specifically limited to "counties in this classification."

The proviso in what is now paragraph 3 of subsection 1 (referring to a court of common pleas with "original, exclusive, criminal and civil jurisdiction") first appeared in Laws of 1951, page 429, as paragraph 5, except that the 1951 law limited the assessed valuation

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to \$24,000,000 instead of the present \$26,000,000. A study of the legislative history of this paragraph makes it evident that the proviso was originally inserted for the purpose of providing for an increase in the compensation of the magistrate of Marion County, inasmuch as the Hannibal Court of Common Pleas was the only common pleas court which had exclusive original criminal and civil jurisdiction. The jurisdiction of the other common pleas courts was concurrent with the circuit court as to civil matters and they did not possess any exclusive original criminal jurisdiction.

Laws of 1955, page 381, increased the maximum assessed valuation applicable to paragraph 3 to \$26,000,000 but left the proviso in question in the same paragraph. Thereafter, although Section 482.150 was twice amended, both in 1959 (H.C.S.H.B. 150) and in 1961 (H.B. 281), the Legislature retained the \$26,000,000 limit on assessed valuation as well as the common pleas proviso in paragraph 3. In these circumstances, we cannot attribute to the Legislature an intent to make the proviso applicable to paragraph 4, even though the proviso, if it is to have any present application at all, would more logically belong in said paragraph 4.

It is the opinion of this office, therefore, that the salary of the Magistrate of Marion County must be determined under the provisions of paragraph 4 of subsection 1 of Section 482.150 and that the salary of the Magistrate of Cape Girardeau County must be determined under the provisions of paragraph 5 of said section.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JN:mc