

COUNTY OFFICERS:
COUNTY CLASSIFICATION:
SALARIES, FEES AND
COMPENSATION:

1. The question of whether Taney County shall become a county of the third class should not be submitted to a vote of the people of Taney County at the general election on November 6, 1962.

2. The effective date of the change in salary for officials of Taney County is the first day of the year of incumbency of such officials which coincides with or is subsequent to date of the change in status of Taney County from a fourth class to a third class county, and the effective date of this change in status is January 1, 1963.

October 16, 1962

OPINION No. 340

Honorable Clifford Crouch
Prosecuting Attorney
Taney County
Forsyth, Missouri

FILED
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Dear Mr. Crouch:

This is in answer to your letter of September 12, 1962, in which you requested an opinion from this office.

Your letter reads as follows:

"On January 25, 1961, the Honorable Haskell Holman, Auditor of the State of Missouri, pursuant to Section 48.040, Revised Statutes, 1949, as amended, advised all Taney County officials that said County met with certain requirements for a change in county classification, and was therefore in position to become a county of third class, as provided in said section. He further advised the officials that HB 297, enacted by the 70th General Assembly, required that the question of change in county classification be submitted to a vote of the people.

"To the best of my knowledge, Christian County was the first county to act under the 1959 law. It submitted the proposition of the change in county classification to the people for their consideration; and the proposition was defeated. Subsequently, certain Christian County officials contested the constitutionality of the new law

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in the Circuit Court in Christian County. As you are aware the Supreme Court of Missouri has just upheld the lower court's finding and has declared the 1959 statute unconstitutional.

"In view of the Supreme Court's finding, I hereby request your opinion on the following questions:

"1. Should Taney County proceed to submit the proposal of the change in county classification to the voters this November?

"2. If not, on what date did or will the salary changes for Taney County officials become effective? January, 1961? January, 1962? or January, 1963?"

In answer to your first question, it is our opinion that Taney County should not submit the proposal of the change in county classification to the voters in November, 1962. The requirement that the question be submitted to a vote of the people at a general election is contained in paragraph 2 of Section 48.030, RSMo 1959.

In the case of *Chaffin v. The County of Christian et al.*, decided by the Supreme Court of Missouri, en banc, on September 10, 1962 (not yet reported), the Supreme Court declared paragraph 2 of Section 48.030, RSMo 1959, to be unconstitutional and void. The general rule is that an unconstitutional statute is in reality no law but is wholly void and, in legal contemplation, is as inoperative as if it had never been passed (11 Am. Jur., 827, 828, Const. Law, Section 148). There is, therefore, no requirement in the Missouri statutes that the question of change in classification of Taney County be submitted to a vote of the people at the general election in November of 1962. Such a proposal should, therefore, not be submitted.

In answer to your second question, we must consider the effect of the Supreme Court's decision in the case of *Chaffin v. The County of Christian*, supra, which declared paragraph 2 of Section 48.030, RSMo 1959, unconstitutional.

In 16 C.J.S., 469, Const. Law, Section 101, it is Stated:

*Reported in 359 S.W. 2d 730

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"Broadly, an unconstitutional statute is void, at all times, and its invalidity must be recognized or acknowledged for all purposes, or as applied to any state of facts, and is no law, or not a law, or is a nullity, or of no force or effect, or wholly inoperative. Generally speaking, a decision by a competent tribunal that a statute is unconstitutional has the effect of rendering such statute null and void; the act, in legal contemplation, is as inoperative as though it had never been passed or as if the enactment had never been written, and it is regarded as invalid, or void, from the date of enactment, and not only from the date on which it is judicially declared unconstitutional."

This general rule is recognized in Missouri. In the case of *Lieber v. Heil*, 32 S. W. 2d 792, the Court said:

"[1-3] Obviously, the effect of the decision of the Supreme Court in *Southard v. Short*, supra [320 Mo.App. 932, 8 S.W. (2d) 903], was to render the statute null and void, not only from and after the date of such judicial pronouncement, but even from the date of its enactment. (citing cases) In other words, the statute is now to be regarded as void ab initio, and as though it had never been in existence; and it is our constitutional duty, following the ruling of the Supreme Court, so to treat it in all matters affecting its constitutionality. (citing cases)

"All parties agree that plaintiff's cause of action grows wholly out of the statute in question, and that her suit is bottomed squarely upon it. It follows, therefore, that with the

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statute declared unconstitutional and void ab initio, she does not have, and has never had, a cause of action thereunder; and, further, that the judgment of the court rendered in the course of proceedings brought under such unconstitutional and void statute is likewise void. 12 C.J.801."

In State on Inf. of McKittrick v. Koon, 201 S. W. 2d 446, l.c. 451, the Supreme Court of Missouri stated:

"* * * We said in State ex rel. Miller v. O'Malley [342 Mo.641, 117 S.W. 2d 324], supra: "An unconstitutional statute is no law and confers no rights. * * * This is true from the date of its enactment, and not merely from the date of the decision so branding it'."

In view of these authorities, it is clear that paragraph 2 of Section 48.030, RSMo 1959, has no effect at all and has had no effect, even from the date of its enactment, because it is void ab initio. Therefore, the date of the change of Taney County from a county of the fourth class to a county of the third class, and the date of any concomitant change in the salaries of the officials of Taney County will be governed by the remaining provisions of Chapter 48 of the Revised Statutes of Missouri 1959.

The salary changes for Taney County officials, referred to in your opinion request, are those changes in the salaries of the county officials which would become operative upon the change of Taney County from a fourth class to a third class county. Such changes in salary will become effective upon the effective date of the change in the classification of the county, when the term of office of such officials begins on January 1. This was the gist of an opinion of this office issued on February 16, 1955, to Honorable Stephen R. Pratt, Prosecuting Attorney of Clay County, Liberty, Missouri, and a copy of that opinion is enclosed for your information. In determining the effective date of the change of salary for these officials whose term of office begins on a date other than January 1, we are enclosing a copy of an opinion of this office issued on January 27, 1955, to Honorable Stephen R.

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Pratt, Prosecuting Attorney of Clay County, Liberty, Missouri, which determines that question.

Section 48.040, RSMo 1959, makes it the duty of the state auditor to notify the county officials of the change in status of the county. The effective date of the change in status of the county is now governed by that portion of paragraph 1 of Section 48.030, RSMo 1959, which reads as follows:

"The change from one classification to another shall become effective at the beginning of the county fiscal year following the next general election after the certification by the state equalizing agency for the fifth successive year that the county possesses an assessed valuation placing it in another class. If a general election is held between the date of the certification and the end of the current fiscal year, the change of classification shall not become effective until the beginning of the county fiscal year following the next succeeding general election."

Your opinion request does not set forth the facts concerning the assessed valuation of Taney County during the past years and it does not set out the contents of the notice of the state auditor of January 25, 1961. We understand that the valuation of Taney County for the past several years has been as follows:

1955	-	9,759,801
1956	-	13,192,701
1957	-	12,524,808
1958	-	12,574,265
1959	-	12,851,643
1960	-	13,296,855
1961	-	13,802,476.

In accordance with Section 50.010, RSMo 1959, the fiscal year of Taney County begins on January 1. A general election was held in 1960 and a general election will be held on November 6, 1962 (Section 1.020(3) RSMo

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1959). Under the valuations set forth above, Taney County had a valuation in excess of ten million dollars (\$10,000,000.00) for the fifth successive year in the year 1960. Regardless of whether the certification by the state equalizing agency was made during the year 1960 or during the year 1961, the change of classification of Taney County from a fourth class county to a third class county will become effective, in accordance with the above quoted portion of paragraph 1, Section 48.030, RSMo 1959, on January 1, 1963. The effective date for any change in salary for any county official will be the first day of the year of incumbency of such official which coincides with or is subsequent to the effective date for the change in status of the county.

CONCLUSION

It is, therefore, the opinion of this office as follows:

1. The question of whether Taney County shall become a county of the third class should not be submitted to a vote of the people of Taney County at the general election on November 6, 1962.

2. The effective date of the change in salary for officials of Taney County is the first day of the year of incumbency of such official which coincides with or is subsequent to the effective date of the change in status of Taney County from a fourth class to a third class county, and the effective date of this change in status is January 1, 1963, in accordance with the notification by the state auditor and in accordance with the terms of paragraph 1 of Section 48.030, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant Wayne W. Waldo.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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2 enclosures

Note: Also see the following opinions:
Jan. 29, 1953 to Curt M. Vogel
Jan. 26, 1961 to G. B. Stewart