COUNTIES:
COUNTY COLLECTORS:
STATUTES:
COMPENSATION:
CONSTITUTIONAL LAW:

Senate Bill No. 259, 72nd General Assembly, becomes effective Oct. 13, 1963. It does not violate Sec. 13, Art. VII, Constitution of Mo., 1945, as to collectors in 1st or 2nd class counties or counties under charter. Collectors in 3rd or 4th class counties which fall into the classification of Subdivision (15) of the bill are, during their current term of office, limited to the compensation authorized by Section 52.270, RSMo 1959.

September 4, 1963 OPINION NO. 303

FILED
303

Honorable Alfred A. Speer
Representative, 12th District
St. Louis County
101 South Meramec
Clayton 5, Missouri

Dear Mr. Speer:

This is in response to your recent request for an opinion of this office which request reads as follows:

> "The recent General Assembly enacted Senate Bill 259, Subsection (15) of which altered the commission to be paid County Collectors who collect over Four Million Dollars ($4,000,000) in taxes per year.
>
> "As you know, St. Louis County collects well over $4,000,000 in property taxes per year, and that by its ordinances the Collector of Revenue is salaried and all such commissions due him are paid into the County's general revenue fund. However, I do not know whether the other Counties affected by Subsection (15) have salaried collectors.
>
> "Will you please give me your opinion whether this new act is invalid with respect to Article VII, Section 13 of the Missouri Constitution dealing with an increase in salary of public officials while in office, and also the date on which this act should be implemented."

Senate Bill No. 259 of the 72nd General Assembly effected a repeal of Section 52.260, RSMo 1959, and an enactment of a new section to be known as 52.260, which, as it applies to your questions, reads as follows:

> "Section 1. Section 52.260, RSMo 1959 is repealed and one new section enacted in lieu thereof, to be known as section 52.260, to read as follows:
>
> 52.260. The collector in counties not having township organization shall collect and retain the following commissions for collecting all state, county, bridge, road, school and all other local taxes, including merchants', manufacturers' and liquor and beer licenses, other than back, delinquent and ditch and levee taxes, and the commissions constitute his compensation except in counties where the collector is paid a salary in lieu of fees:
>
> * * * *
>
> (15) In counties wherein the total amount levied for any one year exceeds four million dollars, a commission of one per cent on the amounts collected."

The act does not purport to increase the compensation of county collectors who are paid by "salary in lieu of fees." Since collectors of counties of the first and second classes are paid by salary, Section 52.320, RSMo 1959, Section 52.420, 1961 Cum. Supp., and since the salary of officers in counties having charters is governed solely by those counties, Section 18(e), Article VI, Constitution of Missouri, 1945, the compensation of such officers will not be increased by the provisions of Senate Bill No. 259. Hence, the constitutional prohibition against an increase in an officer's compensation during his term of office, Section 13, Article VII, Constitution of Missouri, 1945, can in no way affect or delay the date upon which Senate Bill No. 259 becomes effective in such counties.

Since Subdivision (15) applies to all counties wherein the "total amount levied for any one year exceeds four million dollars . . .", it is conceivable that it could apply to counties of the third and fourth class. Because the collectors in those counties are compensated by commissions, it is possible that Senate Bill No. 259 could cause an increase in their compensation by making the provisions as to limitations on the amount of commissions collectors are allowed to retain found in Section 52.270, 1961 Cum. Supp., inapplicable to such collectors. This section imposes limitations on the amount of commissions retainable by collectors in the classifications indicated in Subdivisions (1) through (14) of Section 52.260, but makes no reference to the collectors who come within the newly created Subdivision (15).

However, we are not advised as to whether any counties of the third and fourth classes, by virtue of their respective tax levies, do in fact come within the provisions of Subdivision (15); and any definitive pronouncement in this area would be based solely on speculation. Suffice it to say that if Subdivision (15) did increase the amount of commissions retainable by removing certain collectors from the limitations set out in Section 52.270, supra, Section 13, Article VII of our Constitution would prevent such collectors from receiving compensation in excess of the presently established limits during their current terms of office. State ex rel. Emmons v. Farmer (Mo. Sup. 1917), 196 SW 1106, 1109[5, 6]. See also opinion of the Attorney General to Milton Carpenter dated December 30, 1959, pp. 7-8, attached herewith. Such a contingency would, however, have no effect upon the applicability of all other provisions of the law.

We turn now to your question concerning the effective date of Senate Bill No. 259. Since the bill contains no emergency clause and is not an appropriation act, it will become part of the law of this state "ninety days after the adjournment of the session at which it was enacted . . .", Section 29, Article III, Constitution of 1945. The 72nd General Assembly having adjourned on July 15, 1963, and Senate Bill No. 259 having been approved by the Governor, it will become effective on October 13, 1963.

Honorable Alfred A. Speer

CONCLUSION

It is the opinion of this office that Senate Bill No. 259 of the 72nd General Assembly will become effective October 13, 1963, in all counties, and that such bill does not increase the compensation of collectors in first or second class counties or counties under a constitutional charter, and such bill will not, during the term of the collectors of third and fourth class counties now in office, authorize the payment to such collectors of compensation in excess of that authorized to be retained by such collectors under the provisions of Section 52.270, RSMo.

This opinion, which I hereby approve, was prepared by my Assistant, Albert J. Stephan, Jr.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:kld;ml