

March 6, 1964.



Honorable Frank Conley
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Conley:

This is in answer to your letter in which you inquire whether the payment for former Probate Judge Howard B. Lang, Sr., under Section 27 of Article V of the Constitution of Missouri, should be handled as a separate budget item or should be included in the budget for the probate court.

It is our view that the payment of half of the probate judge's salary which former Judge Lang is entitled to under the provisions of Section 27 of Article V of the Constitution should be budgeted separately from the probate court budget items.

The payment to Judge Lang under the constitutional provision is not made because of any service he renders at the present time to the probate court or concerning probate proceedings. In the case of *State ex inf. Dalton v. Russell*, 281 S.W. 2d 781, the Supreme Court held that a circuit judge retired under such constitutional provision was not a judge after he was so retired. We, therefore, believe that Judge Lang has no connection with the probate court at the present time and that his pay is granted him not because of any function he has relating to the probate court but by virtue of the constitutional provision itself.

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Therefore, it is our view that the budget should include an item for payment of the amount due Judge Lang under the constitutional provision separate and apart from the budget items for the probate court.

Inasmuch as Judge Lang is not now a county officer and his compensation is being paid by virtue of the constitutional provision, such payment should not be in class four of the budget, but should instead be either in class five or class six of the county budget. Class five includes contingent and emergency expenses of the county and class six includes payment for any lawful purpose. In view of these provisions it would be proper to budget the payment for Judge Lang under either class five or class six of the budget.

Yours very truly,

CBB/fh

THOMAS F. EAGLETON
Attorney General