COUNTY CLERKS:
COUNTY CLERKS SALARIES:
COUNTY OFFICERS:
SALARIES OF COUNTY CLERKS:

Under Senate Bill 91 (Section 51.300 V.A.M.S.) the change of salaries of County Clerks in third class counties is effective January 1, 1967.

OPINION NO. 339

October 21, 1965

FILED
339

Honorable G. Stafford Owen
State Representative
DeKalb County
Maysville, Missouri

Dear Representative Owen:

This letter is in answer to your request for a legal opinion as to whether or not the salary change for clerks of county courts of third class counties, contained in Senate Bill No. 91 of the 73rd General Assembly, (Section 51.300 V.A.M.S. Sept. 1965 pamphlet), will be effective during the present terms of such clerks.

Senate Bill No. 91 of the 73rd General Assembly of Missouri, repealed Section 51.300, RSMo 1959, and enacted a new section in lieu thereof, to be known as Section 51.300. Section 51.300 as amended provides:

> "1. The clerk of the county court of each county of the third class shall receive a salary as follows:
>
> (1) In counties with a per capita assessed valuation of less than seven hundred dollars, the sum of five thousand two hundred and sixty dollars;
>
> (2) In counties with a per capita assessed valuation of seven hundred dollars and less than one thousand dollars, the sum of four thousand one hundred seventy dollars;
>
> (3) In counties with a per capita assessed valuation of one thousand dollars and less than one thousand three hundred dollars, the sum of five thousand four hundred and eighty dollars;
>
> (4) In counties with a per capita assessed valuation of one thousand three hundred dollars or over, the sum of six thousand three hundred and sixty dollars.
>
> "2. The per capita assessed valuation of each county shall be determined on or before January 1, 1967, and each year thereafter for the purposes

> of subsection 1 and shall be based on the last decennial census.
>
> "3. In addition to the salaries fixed under this section the clerk shall receive annually the compensation provided by section 50.810, RSMo. As amended Laws 1959, S. B. No. 63, § 1; Laws 1965, p. ____, S. B. No. 91, § 1."

The section affords an increase in salary for some clerks while other clerks shall receive a salary less than they are presently receiving under repealed Section 51.300.

Attention is directed to Article VII, Section 13, Constitution of Missouri which provides:

> "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."

This provision is applicable to clerks of county courts of all third class Missouri counties. However, it has been held that such constitutional prohibition does not apply and a public officer may receive additional compensation during his term of office when the law imposes new duties upon him and increased compensation may be given him for the performance of new duties. Mooney v. St. Louis County, 286 S.W. 2d 763.

Senate Bill No. 91 does not impose any new duties upon county clerks of third class counties. Consequently if the act provided for an increase during the term of office of county clerks occupying such office when the law became effective those county clerks who would be entitled to an increase in salary under the Bill would be prohibited by the above mentioned constitutional provision from receiving same during their present terms of office.

As shown, the salaries of county clerks of third class counties are based upon a determination made of the per capita assessed valuation of such counties, under provisions of the Bill. Said Bill became effective on October 13, 1965, and provided that the determination shall be made initially on or before January 1, 1967.

It is clear from the provisions of Senate Bill No. 91 that the determination of salaries of county clerks of the third class counties to be made by the county courts "on or before January 1, 1967" is for determination of the salaries of county clerks for the year 1967 and not for a prior year or period. The legislative intent is clear and the date of January 1, 1967, is the last date upon which a determination can be made, but whether made on January 1, 1967 or prior thereto the salary so determined is for the year 1967.

This legislative intent appears to be confirmed by the provisions of Senate Bill No. 90 (Section 51.285 V.A.M.S. Sept. 1965 Supp.) which expressly authorizes compensation for extra duties

provided therein for County Clerks of Class I, Class II and Class IV Counties only for the years 1965 and 1966. This makes clear that the legislature did not intend Senate Bill No. 91 to become operative until January 1, 1967.

The provisions of Senate Bill No. 90 are for establishing in part the salaries of county clerks during the temporary period only until the provisions of Senate Bill No. 91 becomes effective in establishing such salaries in a comprehensive statutory scheme under which the first determination is to be made of salaries for the year 1967.

Since the terms of county clerks in third class counties will expire December 31, 1966, no change in salaries of such clerks is provided for in Senate Bill No. 91 during their present terms of office.

CONCLUSION

Therefore, it is the opinion of this office that Senate Bill No. 91, of the 73rd General Assembly (Section 51.300 V.A.M.S. Sept. 1965 pamphlet), which provides for the salaries of clerks of county courts of third class counties to be in certain sums according to the per capita assessed valuation of the county as determined by the county court and as therein provided authorizes the first determination to be made on or before January 1, 1967 and such change of salary shall be effective for the year 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

Norman H. Anderson

NORMAN H. ANDERSON
Attorney General