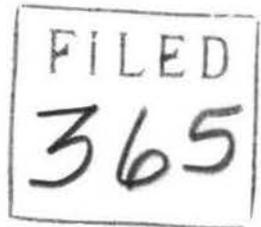


SHERIFFS: (1) Increase mileage allowed
COUNTY CLERKS AND DEPUTIES: sheriff under Senate Bill No.
PROBATE CLERKS: 87, effective October 13, 1965.
COUNTY HIGHWAY ENGINEERS: (2) Increase in amount available
COUNTY OFFICERS: under Senate Bill 89, for deputy
SALARIES: clerks in third class counties,
effective October 13, 1965. (3) in-
crease in amount available under House Bill No. 71, for probate
clerks effective October 13, 1965. (4) Increase in salary for
county highway engineers under House Bill No. 473, does not apply
to present term of office. (5) Salary increase under Senate Bill
No. 88, for county clerks does not apply to present term of office.
(6) Increase in amount available for deputy county clerks in fourth
class counties under Senate Bill No. 88, effective October 13, 1965.
(7) Increase in compensation for county clerks, except in second
class counties under Senate Bill No. 90, effective October 13, 1965.
(8) Increase in compensation under Senate Bill No. 90, prorated on
monthly basis.

November 19, 1965

Opinion No. 365

Honorable Haskell Holman
State Auditor
Capitol Building
Jefferson City, Missouri



Dear Mr. Holman:

In your letter of September 24, 1965, you inquire when the salary and expense provisions provided for in the following bills enacted by the 73rd General Assembly of Missouri become effective and operative.

Article VII, Section 13 of the Constitution of Missouri, 1945, provides as follows:

"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."

Senate Bill No. 87, 73rd General Assembly, (Section 57.430 VAMS 1965) increases the mileage allowance to be paid the sheriff and his deputies for "actual and necessary expenses for each mile traveled in serving warrants" etc., in class three and four

Honorable Haskell Holman

counties. In an opinion issued by this office on December 6, 1961, to Honorable James E. Woodfill, Prosecuting Attorney of Vernon county, Nevada, Missouri, it was held that Section 13, Article VII of the Constitution of Missouri does not prohibit the increase in reimbursement for sheriffs and their deputies for mileage actually traveled in performing their official duties. A copy of this opinion is enclosed.

It is the opinion of this office that such mileage allowance provided for in Senate Bill No. 87 is not compensation as that term is used in Article VII, Section 13 of the Constitution of Missouri, 1945, and the provisions of said bill became effective on October 13, 1965.

Section 51.450, RSMo 1959, authorized the county clerks in class three counties to employ deputies and assistants and determine the amount of compensation to be paid with the maximum amount set at four thousand dollars per year. Senate Bill No. 89, 73rd General Assembly, (Section 51.450 VAMS 1965) repeals and reenacts said section omitting the maximum amount of four thousand dollars.

In an opinion issued by this office on October 22, 1953, to Haskell Holman, State Auditor, it was held that an increase in the amount available to the county clerk for clerical hire or additional compensation for deputies or assistants is not in conflict with Article VII, Section 13 of the Constitution of Missouri, 1945, prohibiting the increase of compensation to a county officer during his term in office. This is due to the fact that the individuals concerned have no definite term of office. A copy of this opinion is enclosed herewith. Therefore, it is the opinion of this office that the provisions of Senate Bill No. 89, for additional compensation for deputies and assistants became effective October 13, 1965.

House Bill No. 71, 73rd General Assembly (Section 483.475 VAMS 1965) relates to the compensation and number of probate clerks, assistants, and stenographers. This bill does not provide for their appointment for any definite period of time, but it does provide they may be removed at the discretion of the probate judge. They do not have a definite term of office. It is our opinion this bill is not in conflict with Article VII, Section 13, of the Constitution of Missouri 1945, because the individuals concerned do not have a definite term of office and that the provision of said bill became effective on October 13, 1965.

House Bill No. 493, 73rd General Assembly (Section 61.190 VAMS 1965) in effect amends Section 61.190, RSMo 1959, to provide for an increase in the salary of the county highway engineer in class two, three, and four counties. Section 61.160, RSMo 1959, provides for the county court in class two, three, and four counties to appoint a highway engineer "for such length of time as may be deemed advisable in the judgment of the county court".

Honorable Haskell Holman

In an opinion issued by this office dated September 30, 1957, to Eldred Seneker, it was held that the county highway engineer appointed by the county court for a definite period of time is an officer whose compensation cannot be increased during the term for which he was appointed, under the provisions of Article VII, Section 13 of the Constitution of Missouri, 1945. A copy of such opinion is enclosed.

It is our opinion that the additional compensation provided in House Bill No. 493, 73rd General Assembly, is not payable to a county highway engineer appointed prior to October 13, 1965, when this bill became effective, and said officers are not entitled to the increase in compensation provided for in said bill during the terms for which they have been appointed. It is effective as to county highway engineers appointed after that date.

Senate Bill No. 88, 73rd General Assembly, repealed Sections 51.350 and 51.460 RSMo 1959, and reenacts Sections 51.350 and 51.460 VAMS 1965 in lieu thereof. Section 51.350 deals with the salary of county clerks in fourth class counties. Section 51.460 deals with the allowance to the county clerk for compensation of deputy clerks and assistants in fourth class counties. Under Section 51.350 RSMo that was repealed, the salary of county clerks in fourth class counties was based on the population of the counties. It provided that in counties with the population of less than 7,500, the salary of the county clerks would be \$1,000, and in counties with the population of 7,500 to less than 10,000, the salary would be \$1,100. Although this section provided for salaries of county clerks in excess of these amounts in fourth class counties with a population of 10,000 or more, there are no such counties. Senate Bill No. 88, provides that the salary in all counties of fourth class, without regard to population, shall be \$1,700. This results in an increase in the salary of such officers which is prohibited by Article VII, Section 13 of the Constitution because it is an increase in compensation of county officers during their present terms of office.

It is the opinion of this office, that county clerks in the fourth class counties are not entitled to receive the increase in compensation provided for under Senate Bill No. 88, 73rd General Assembly, Section 51.350 VAMS 1965, during their present terms of office.

In regard to the provision of Senate Bill No. 88, insofar as it authorizes an increase in the amount allowed for compensation

Honorable Haskell Holman

for deputy clerks and assistants, since these persons do not have a definite term, Article VII, Section 13 of the Constitution of Missouri, 1945, does not apply. Therefore, it is our opinion that the provision of Senate Bill No. 88, providing for an increase for the allowance of compensation for deputy clerks and assistants, became effective October 13, 1965.

Senate Bill No. 90, 73rd General Assembly (Sections 51.135 and 51.285 VAMS 1965) requires the county clerk of each county court in this state to provide the revisor of statutes with a complete list of each local option law that has been adopted and is in effect in his county. It requires this list to be mailed to the revisor of statutes before July 1, 1966, and thereafter, the clerk is to notify the revisor of statutes promptly upon the adoption by a vote of the people of any future local option law. Hence, this law provides for compensation to be paid clerks of certain counties for those extra duties assigned to them.

It has been held by the Supreme Court of this state that compensation for extra duties required by a county official by statute not ordinarily incident to or germane to the present duties, is not in conflict with the provisions of Article VII, Section 13 of the Constitution. *Little River Drainage District v. Lassater*, 29 S.W. 2d 716, 325 Mo. 493.

Senate Bill No. 90, provides for additional duties to be performed by the county clerk in each county of the State, and provides for additional compensation for such duties, in certain class counties, the amount of compensation depending upon the population of the county. The additional duties assigned under this bill are not ordinarily incident to or germane to their present duties. This does not conflict with the above Constitutional provision. However, it expressly provides that in years 1965 and 1966 only the county clerks in counties other than in second class counties shall receive the extra compensation. Therefore, all county clerks in counties other than second class counties are entitled to the additional compensation after October 13, 1965, for 1965 and 1966.

Senate Bill No. 90, provides for additional compensation on a yearly basis. You inquired whether the additional compensation was to be paid in one sum or to be prorated.

Section 50.330 RSMo 1959, provides that any salary provided for a county officer, deputy, or assistant shall be paid in monthly installments on the first of each month.

It is our opinion that the additional compensation provided for in House Bill No. 90 is to be prorated each month on a yearly basis, so that each month the officer receives 1/12 of such salary increase and for the month of October, 1965, the proportionate part of such monthly salary for the period October 13, when the

Honorable Haskell Holman

bill became effective to the end of the month. Therefore, county clerks are not to receive the full amount of the annual compensation provided therein for the year 1965.

CONCLUSION

It is therefore the opinion of this office that:

- (1) The increase in mileage allowance provided for in Senate Bill No. 87, 73rd General Assembly (Section 57.430 VAMS 1965) for sheriffs and their deputies, became effective October 13, 1965.
- (2) The increase in the amount available to county clerks for deputies, assistants and clerks, under Senate Bill No. 89, 73rd General Assembly (Section 51.450 VAMS 1965) became effective October 13, 1965.
- (3) The increase in amount allowed as compensation of probate clerks, assistants and stenographers, under House Bill No. 71 73rd General Assembly (Section 483.475 VAMS 1965) became effective October 13, 1965.
- (4) Increase in salaries for the county highway engineer in Class 2, 3 and 4 counties under House Bill No. 493, 73rd General Assembly (Section 61.190 VAMS 1965) does not apply during the present term of such officers. It does apply to any such officer appointed after October 13, 1965.
- (5) The salary increase for county clerks in fourth class counties provided for in Senate Bill No. 88, 73rd General Assembly (Section 51.350 VAMS 1965) does not apply during the present term of such officers.
- (6) The additional amount of money that may be allowed to county clerks in all fourth class counties for deputy and clerical hire as provided under Senate Bill No. 88, 73rd General Assembly (Section 51.460 VAMS 1965) became effective October 13, 1965.
- (7) The increase in compensation for county clerks in all counties in the State, except second class counties, provided for under Senate Bill No. 90, 73rd General Assembly (Sections 51.135 and 51.285 VAMS 1965) became effective October 13, 1965.

Honorable Haskell Holman

(8) The additional compensation provided for in Senate Bill No. 90, 73rd General Assembly (Sections 51.135 and 51.285 VAMS 1965) is to be prorated each month on a yearly basis, so that each month the officer is to receive 1/12 of the yearly salary payable on the first day of each month, and for the month of October, 1965, the proportionate part of such monthly salary for the period October 13, 1965, when the bill became effective to the end of the month.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enclosures:

Opinion #99(1961)
Opinion #81(1957)