

CIRCUIT CLERK-RECORDER: Salary increase under Senate Bill  
COUNTY OFFICERS: No. 267 not applicable during  
COMPENSATION: present term of office.

November 9, 1965

Opinion No. 384

Honorable Robert B. Paden  
Prosecuting Attorney  
DeKalb County  
Maysville, Missouri 64469



Dear Mr. Paden:

In your letter of October 16, 1965, you submitted a request for an opinion as follows:

"The Honorable Oscar W. Moorman, Circuit Clerk-Recorder of DeKalb County, Missouri, has sought my opinion on the provisions of Section 483.335, RSMo 1959, as amended by Senate Bill No. 264 of the 73rd General Assembly, which is an increase in salary for his office. It is my opinion that the increase will not be effective until the next term of office, as there are no additional duties imposed under the act.

"Please give us your opinion as Mr. Moorman is not completely satisfied with mine."

Senate Bill No. 264, 73rd General Assembly, became effective October 13, 1965. It repealed and reenacted Section 483.335, RSMo, and as reenacted reads in part as follows:

"The circuit clerk and recorder in counties of the third class wherein the two offices have been combined, shall receive annually for his services, the following:

"(1) In counties having a population of less than seven thousand five hundred, the sum of four thousand four hundred dollars; \* \* \*"

DeKalb County has a population of 7, 226 according to the last decennial census, which places it within the classification of subdivision 1. Under Senate Bill No. 264, supra, the salary of the circuit clerk-recorder in counties of this classification is increased from \$3,200 to \$4,400 per annum.

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Article VII, Section 13, Constitution of Missouri, 1945, 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."

The Circuit Clerk-Recorder of DeKalb County is a county officer within this constitutional provision.

This constitutional provision was construed by the Supreme Court in Mooney vs. County of St. Louis, 286 S.W. 2d 763. In that case the Court was considering Senate Bill No. 254 and Senate Bill No. 237, 66th General Assembly. Senate Bill 254 provided for a salary increase and Senate Bill No. 237 assigned additional duties for the Board of Election Commissioners of St. Louis County, Missouri. In discussing this constitutional provision the Court states, l.c. 766:

"[4] There can be no doubt but that the legislature may award extra compensation to an incumbent for the performance of certain newly imposed duties without violating the constitutional inhibition under consideration. State ex rel. McGrath v. Walker, 97 Mo. 162, 10 S.W. 473; State ex rel. Harvey v. Sheehan, 269 Mo. 421, 190 S.W. 864; Denny v. Silvey, 302 Mo. 665, 259 S.W. 422; Little River Drainage Dist. v. Lassater, 325 Mo. 493, 29 S.W. 2d 716. 'Although new duties germane to an office are imposed on an officer, the compensation cannot be increased without violating the prohibition against an increase in compensation after election or appointment, or during the term of the office. \* \* \* However, such a provision does not prevent the legislature \* \* \* from providing that a change in the duties of an incumbent of an office shall be accompanied by \* \* \* an increase \* \* \* of compensation where the duties added \* \* \* are extrinsic or foreign to the office and not incidental or germane thereto.' 67 C.J.S., Officers, §95g.

"[5,6] The burden was on the plaintiffs to show that the increase in salary provided in S.B. 254 was intended by the General Assembly as compensation for the additional duties required by S.B.237.  
\* \* \*

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"In the instant case there was no statement in either S.B. 254 or S.B. 237 to the effect that the increase in salary was to compensate for added duties. Neither bill referred to the other. \* \* \*"

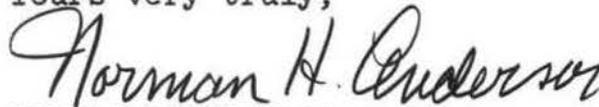
As heretofore stated, Senate Bill No. 264, supra, increases the compensation of the circuit clerk-recorder from \$3,200 to \$4,400 annually in counties of the classification of DeKalb County. It does not provide that the increase in compensation is for any additional duties required by statute to be rendered by said officers. To hold that it provides for an increase in compensation for said officials during the present term would be in conflict with Article VII, Section 13, of the Constitution.

CONCLUSION

It is the opinion of this office that the increase in compensation provided for in Senate Bill No. 264, 73rd General Assembly, does not apply to the Circuit Clerk-Recorder of DeKalb County during his present term of office.

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

Yours very truly,



NORMAN H. ANDERSON  
Attorney General