

COUNTY CLERKS:
DEPUTY COUNTY CLERKS:
DEPUTY COUNTY CLERKS, ALLOWANCE
TO OFFICE FOR COMPENSATION:

The amount of money available to
County Clerks in Third Class
Counties under Section 51.450,
RSMo Cum. Supp. 1965, for deputies
and assistants does not have to
be prorated but the entire amount may be used during the year 1965.

Opinion No. 89 (1966)
Opinion No. 461 (1965)

February 16, 1966

Honorable Gene Thompson
Prosecuting Attorney
Nodaway County
Maryville, Missouri 64468



Dear Mr. Thompson:

In your letter of November 29, 1965, you submitted in substance two questions to be answered:

1. Whether the increase in the amount available to county clerks, deputies, assistants, and clerical hire under Senate Bill No. 89, 73rd General Assembly (Section 51.450, VAMS) for the year 1965, has to be prorated or whether the entire amount may be used during 1965.
2. Whether the increase in compensation for prosecuting attorneys in third class counties is to be prorated on the calendar basis beginning October 13, 1965.

In an opinion issued by this office on November 19, 1965, it was held that the increase in the amount of money available to county clerks in third class counties for additional compensation for deputies and assistants under Section 51.450, RSMo Cum. Supp. 1965, does not conflict with Article VII, Section 13 of the Constitution of Missouri 1945, which prohibits the increase of compensation of a county officer during his term of office due to the fact that such individuals do not have a definite term of office and that the provisions in said Bill became effective October 13, 1965.

You inquire whether the county clerk may use the entire amount of money made available under said Bill for deputy and clerical hire during the year 1965, or whether the amount made

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available for 1965, has to be prorated from October 13, 1965.

Section 51.450, RSMo Cum. Supp. 1965, paragraph 1, authorizes county clerks to employ deputies and assistants and provides that the amount of money to be allowed for their compensation is to be determined according to the population of the county and the salary of the clerk. Paragraph 2 provides that the county court may allow an additional sum not to exceed \$1,000 per annum to be used by said clerks solely for clerical hire. The need for additional clerical hire and the compensation is to be determined by the county court. Apparently the question you submitted refers to the increase that may become available under paragraph 1.

Article III, Section 39(3), Constitution of Missouri 1945, provides that the General Assembly shall not have power:

"To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part; (Sec. 48, Art. IV, Const. of 1875)."

Under this provision of the Constitution an increase in compensation, fee, or allowance of extra compensation, fee, or allowance to a public officer, servant, or contractor can not be granted after the service is rendered or after the contract is performed in part. Under this provision deputies, assistants, and clerks in the office of the county clerk could not be paid any additional compensation after the service is performed even though the money may be available.

Section 51.450, RSMo Cum. Supp. 1965, paragraph 1, the county clerks in third class counties are entitled to employ deputies and assistants and determine the compensation to be paid said deputies and assistants within their discretion from the amount of money made available according to the population of the county and the salary of the clerk. It is a matter of discretion under paragraph 1, of Section 51.450, Cum. Supp. 1965, with the county clerk as to the number of deputies and assistants that he may need at a given time and the compensation that he may pay them. The only limitation as to the use of the money is the limitation as provided for in Article III, Section 39(3), Constitution of Missouri 1945, above referred to. The money made available for pay to deputies and assistants does not have to be prorated over any given period of time.

In regard to the second question you have submitted, I am enclosing herewith an opinion issued by this office on

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December 2, 1965, to Honorable Haskell Holman, State Auditor, Jefferson City, Missouri, which holds that the compensation provided for in Section 56.291, RSMo Cum. Supp. 1965, became effective October 13, 1965, and that the compensation is to be prorated on a yearly basis from that date.

CONCLUSION

It is the opinion of this office that the amount of money available to county clerks in third class counties under Section 51.450, RSMo Cum. Supp. 1965, for deputies and assistants does not have to be prorated but the entire amount may be used during the year 1965, provided that services already rendered may not be compensated in violation of Article III, Section 39(3), Constitution of Missouri 1945.

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

Very truly yours,


NORMAN H. ANDERSON
Attorney General