

COUNTY COURTS: Pursuant to Section 478.013, RSMo. Cum. Supp.
CIRCUIT JUDGES: 1965, (1) it is mandatory that the circuit
SALARIES: judge or judges of a judicial circuit composed
STATUTES: of two or more counties, one of which is a
county of the second class, shall each receive
\$3,000 payable by the counties composing the circuit, with each
county contributing a proportionate part thereof, determined by the
ratio that the population that each county bears to the population
of the entire circuit; (2) the judge or judges of a circuit composed
of or within a single county are not entitled to receive any greater
annual compensation than \$19,000, including such part as may be
paid by such county.

OPINION NO. 190

April 20, 1966

Honorable Haskell Holman
Auditor of the State of Missouri
Capitol Building
Jefferson City, Missouri



Dear Auditor Holman:

You have requested an official opinion of this office which reads in part as follows:

"This office hereby requests your official interpretation of the provisions of paragraph 2 of Section 478.013 Cumulative Supplement 1965 pertaining to the following:

(1) That portion of paragraph 2 reading as follows:

'Each judge of the circuit court of a judicial circuit which includes a county of the second class shall receive an annual salary of nineteen thousand dollars; sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or counties composing the circuit; the county part of the salary or salaries shall be divided among the counties and paid by them proportionately as the population of such county bears to the entire population of the circuit * * *.'

Under the above provisions, wherein a judicial circuit is composed of two or more counties, one of which is a county of the second class, is it not mandatory that the circuit judge or judges shall each receive three thousand dollars

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payable by the counties composing the circuit with each county contributing a proportionate part thereof that would be determined by the ratio that the population of each county bears to the population of the entire circuit?

(2) That portion of paragraph 2 which reads as follows:

'If the county court of the county of which a circuit is composed so orders, each judge of that circuit shall receive an additional one thousand eight hundred dollars per annum to be paid by the county composing the circuit.'

Under the above quoted provision, would the judge or judges of a circuit or circuits composed of or within a single county, regardless of the classification or size of the county, be entitled to receive one thousand eight hundred dollars per annum in addition to the annual salary of nineteen thousand dollars if the county court of the county so orders?"

In construing statutes, words are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended. 82 C.J.S. Statutes, Section 329, Page 639; O'Malley v. Continental Life Insurance Company, Mo., 75 S.W.2d 837; American Bridge Company v. Smith, Mo., 179 S.W.2d 12, certiorari denied, 323 U.S. 712, 65 S.Ct. 37. Further, under the general rule of express mention and implied exclusion, the express mention of one matter excludes other similar matters not mentioned; every positive direction in a statute contains an implication against everything contrary to it; the specification of one particular class excludes all other classes, and an affirmative description of powers granted implies a denial of nondescribed powers. 82 C.J.S. Statutes, Section 333, Page 668, Kroger Grocery and Baking Company v. City of St. Louis, Mo., 106 S.W.2d 435.

Applying the above rules to your inquiry, respecting question (1), whether in a judicial circuit composed of two or more counties, one of which is a second class county, the circuit judge or judges thereof shall each receive three thousand dollars annually payable by the counties composing the circuit, with each county contributing a proportionate part thereof which would be determined by the ratio that the population of each county bears to the population of the entire circuit, the answer is in the affirmative. Such is the clear, evident, unequivocal and reasonable meaning of the portion of subsection 2 of Section 478.013, supra, quoted in your question (1).

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With respect to question (2), whether judges of circuits composed of or within a single county are entitled to receive \$1,800 per annum in addition to the annual salary of \$19,000 if the county court of the county so orders, the answer is in the negative. The actual statute is the bill, agreed to and finally passed by the legislature and signed by the governor, not the purported statute as it appears in the official revision. *State v. Hicks, Mo.*, 142 S.W.2d 472; *Bird v. Sellers, Mo.*, 26 S.W. 668.

House Bill No. 390, 73rd General Assembly, as agreed to and finally passed, reads as follows:

"Section 1. Section 478.013, RSMo. Supp. 1963 is repealed and one new section enacted in lieu thereof, to be known as section 478.013, to read as follows:

478.013. 1. Each judge of the circuit court of a judicial circuit composed of a single county or city which now has or may hereafter have more than two hundred thousand inhabitants, or judge of a judicial circuit composed of a single county within which circuit any part of a portion of a city is located, which city now has or may hereafter have more than two hundred thousand inhabitants, shall receive an annual salary of nineteen thousand dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or city composing the circuit.

2. Each judge of the circuit court of a judicial circuit composed of a single county which now has or may hereafter have more than seventy-five thousand inhabitants and less than two hundred thousand inhabitants, shall receive an annual salary of seventeen thousand two hundred dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and one thousand two hundred dollars by the county composing the circuit. If the county court of the county of which a circuit is composed so orders, each judge of that circuit shall receive an additional one thousand eight hundred dollars per annum to be paid by the county composing the circuit.

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3. All other judges of the circuit courts of this state shall each receive an annual salary of sixteen thousand dollars payable by the state out of the state treasury. If the county courts of all of the counties composing a circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit. The county part of the salary shall be divided among the counties and be paid by them proportionately as the population of each county bears to the entire population of the circuit.

4. No circuit judge shall practice law or do a law business nor shall he accept, during his term of office, any public appointment or employment for which he receives compensation for his services."

Senate Substitute for House Bill No. 459, 73rd General Assembly, as agreed to and finally passed, reads as follows:

"Section 1. Section 478.013, RSMo. Supp. 1963 is repealed and one new section enacted in lieu thereof, to be known as section 478.013, to read as follows:

478.013. 1. Each judge of the circuit court of a judicial circuit composed of a single county or city which now has or may hereafter have more than one hundred twenty-five thousand inhabitants, or judge of a judicial circuit composed of a single county within which circuit any part or portion of a city is located, which city now has or may hereafter have more than two hundred thousand inhabitants, shall receive an annual salary of nineteen thousand dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or city composing the circuit.

2. Each judge of the circuit court of a judicial circuit which includes a county of the second class shall receive an annual salary of nineteen thousand dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or counties composing the circuit, the county part of the salary or salaries

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shall be divided among the counties and paid by them proportionately as the population of such county bears to the entire population of the circuit.

3. All other judges of the circuit courts of this state shall each receive an annual salary of sixteen thousand dollars payable by the state out of the state treasury. If the county courts of all of the counties composing a circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit, the counties contributing equal amounts.

4. No circuit judge shall practice law or do a law business nor shall he accept, during his term of office, any public appointment or employment for which he receives compensation for his services."

Section 478.013, RSMo. Cum. Supp. 1965 reads as follows:

"1. Each judge of the circuit court of a judicial circuit composed of a single county or city which now has or may hereafter have more than one hundred twenty-five thousand inhabitants, or judge of a judicial circuit composed of a single county within which circuit any part or portion of a city is located, which city now has or may hereafter have more than two hundred thousand inhabitants, shall receive an annual salary of nineteen thousand dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or city composing the circuit.

"2. Each judge of the circuit court of a judicial circuit which includes a county of the second class shall receive an annual salary of nineteen thousand dollars, sixteen thousand dollars of which shall be paid by the state out of the state treasury and three thousand dollars by the county or counties composing the circuit; the county part of the salary or salaries shall be divi-

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ded among the counties and paid by them proportionately as the population of such county bears to the entire population of the circuit. If the county court of the county of which a circuit is composed so orders, each judge of that circuit shall receive an additional one thousand eight hundred dollars per annum to be paid by the county composing the circuit.

3. All other judges of the circuit courts of this state shall each receive an annual salary of sixteen thousand dollars payable by the state out of the state treasury. If the county courts of all of the counties composing a circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit, the counties contributing equal amounts.

4. No circuit judge shall practice law or do a law business nor shall he accept, during his term of office, any public appointment or employment for which he receives compensation for his services."

The revisor's note appended to the quoted statute, states that it consists of House Bill No. 459, supra, with the exception of the last sentence in Subsection 2, which is taken from House Bill No. 390, supra. We think that House Bill No. 459, entirely supersedes House Bill 390, and that the inclusion of a part of House Bill 390 in the revision is erroneous.

We enclose a copy of the opinion of the Attorney General (Opinions No. 388 and 390) dated November 8, 1965, addressed to Honorable Carroll M. Blackwell and Honorable Roderic R. Ashby, holding that House Bill No. 459, supra, is controlling insofar as it conflicts with House Bill No. 390, supra.

House Bill 390 provides that in single county circuits of more than 75,000 inhabitants and less than 200,000 inhabitants, each judge shall receive \$17,200, a year and, at the option of the county, an additional \$1800. This conflicts with House Bill 459. House Bill 459 provides that in single county circuits which are second class counties the salary shall be \$19,000 (subsection 2). In the case of a circuit composed of a single county of over 125,000 inhabitants or of a circuit composed of a single county which contains any part of a city of over 200,000 inhabitants the salary

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shall be \$19,000 (subsection 1). In any other single county circuit, the salary is \$16,000, plus an additional \$3,000, at the option of the county (subsection 3). The last sentence of subsection 2 of Section 478.013, RSMo. Cum. Supp. 1965, taken out of context from House Bill 390, read in connection with the remainder of subsection 2 of Section 478.013, RSMo. Supp. 1965, seems to allow an additional \$1800 over and above the \$19,000, annual salary payable to a judge of a circuit court of a judicial circuit composed of a single county of the second class. This is not authorized by either House Bill 390 or House Bill 459, supra.

Both House Bill No. 459 and House Bill No. 390, supra, have the same scope; namely, the salaries of the circuit judges of the state. Therefore, insofar as the two bills do not conflict, they are identical in meaning. In other words, House Bill No. 390 adds nothing to House Bill No. 459 that is not in conflict therewith. Thus, House Bill No. 390 has no place in the statute. The statute is simply House Bill No. 459, neither more nor less. The last sentence of subsection 2 in the revision is no part of the law. House Bill 459, supra, provides that the maximum salary of a circuit judge shall be \$19,000. In the case of a circuit composed of a single county of the second class or of a single county or city having more than 125,000 inhabitants, or of a single county containing any part of a city of more than 200,000 inhabitants, each judge thereof receives \$19,000 annually, of which \$16,000 is paid by the state and \$3,000 is paid by the county or city comprising the circuit. In all other single county circuits, the salary is \$16,000 a year and, at the option of the county, an additional \$3,000.

You have not asked, we do not consider and do not pass upon the constitutionality of said Section 478.013.

CONCLUSION

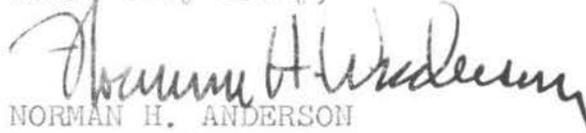
It is the opinion of the Attorney General, that, pursuant to Section 478.013, RSMo. Cum. Supp. 1965, (1) it is mandatory that the circuit judge or judges of a judicial circuit composed of two or more counties, one of which is a county of the second class, shall each receive \$19,000, of which \$16,000, shall be paid by the state and \$3,000, paid by the counties composing the circuit, with each county contributing a proportionate part thereof, determined by the ratio that the population that each county bears to the population of the entire circuit; (2) the judge or judges of a circuit composed of or within a single county are not entitled to receive

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any greater annual compensation than \$19,000, including such part as may be paid by such county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enclosures (opinions):

No. 388, to Honorable Carroll M. Blackwell, 11/8/65;
No. 390, to Roderic R. Ashby, 11/8/65.