

March 20, 1967

FILED

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OPINION NO. 102
543 (1966)
Answered by Letter, Chitwood

Honorable C. M. Bassman
State Representative
Gasconade County
9th and Gutenberg
Hermann, Missouri

Dear Representative Bassman:

This office is in receipt of your request for a legal opinion on two questions raised in connection with a proposed legislative change of Section 52.280 RSMo., 1959. Said section authorizes a collector of a third or fourth class county to retain a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions he may retain under the statutes as compensation, for deputy or clerical hire. Said section reads as follows:

"In addition to the maximum amount of fees and commissions permitted to be retained by county collectors in sections 52.260 and 52.270, each collector in counties of the third and fourth classes may retain for the payment of deputy and clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which the officer is permitted to retain by the sections, but the deputy and clerical hire is payable out of fees and commissions earned and collected by the officer only, and not from general revenue." (underscoring ours)

As we understand it the proposed legislative change in law, is to repeal Section 52.280 supra and to enact a new section with the same wording as said Section 52.280, except that where the present section reads "twenty-five per cent of the maximum amount of fees and commissions which the officer is permitted to retain by these sections" the new

Honorable C. M. Bassman

section would read "fifty-per cent."

The specific inquiries you have made regarding the proposed change in Section 52.280, are:

"Would this be construed to mean that this would constitute a raise in the county collector's salary?"

"Under the state constitution state or county officer's salary may not be raised during their term of office unless an additional duty is imposed.

"In your opinion would the change from twenty-five per cent to fifty per cent that could be retained for deputy or clerical hire be retainable by the county collector if the change would be enacted during his term of office?"

In an opinion of this office issued to Haskell Holman, State Auditor, on October 22, 1953, it was held that an increase in the amount available to the county clerk for deputy or clerical hire or additional compensation for regular deputies or assistants is not in violation of Article VII, Section 13 of the Constitution of Missouri, prohibiting an increase of compensation of a county officer during his term of office because such deputies or assistants have no definite term of office and an increase allowed to an office in the amount to be expended for clerical help is not an increase in the compensation of such officer. The same legal principle involved in said opinion is also involved in the present inquiries, and a copy of such opinion is enclosed.

In this connection, we wish to point out that if the proposed change in Section 52.280, supra, were made during the collector's term of office, funds collected under authority of the section and retained by him could be used solely for deputy and clerical hire. If he spent only a portion of said funds for deputy or clerical hire, he could not retain the unused portion for himself, as he is legally accountable for such used portion of said funds. This was held to be the law in an opinion of this office, issued to Norman S. Newkirk, Collector of Revenue, Warsaw, Missouri, on August 27, 1936, a copy of which is enclosed.

Honorable C. M. Bassman

For reasons given in the enclosed opinion, our answer to the first inquiry is that any additional funds collected for deputy or clerical hire by the collector, if the proposed change in Section 52.280, supra, mentioned above were enacted, would not be an increase in compensation of the collector.

Our answer to the second inquiry is that if the proposed change of Section 52.280, supra, from twenty-five per cent of collections to be retained by the collector for deputy or clerical hire, to fifty per cent were made, and if such legislative change were made during the collector's term of office, he could legally use the additional amount collected for deputy or clerical hire.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Encl: Opinion No. 41, Haskell Holman, 10/22/1953