

LEGISLATORS:
SENATORS:
REPRESENTATIVES:
GENERAL ASSEMBLY:
LEGISLATURE:
COMPENSATION:

Increase in compensation for Senators and representatives under House Bill No. 100 of the 74th General Assembly effective first day of regular session of 75th General Assembly. Increase applies to holdover Senators as of such date.

OPINION NO. 339

August 1, 1967

Honorable John C. Vaughn
Comptroller and Budget Director
State of Missouri
Jefferson City, Missouri



Dear Mr. Vaughn:

This is in answer to your opinion request of recent date reading as follows:

"By constitutional amendment approved by the voters on November 8, 1960, the General assembly of Missouri is authorized to fix the salaries of its members. Pursuant to the amendment, the 74th General Assembly met in regular session on July 26, 1967, and passed House Bill No. 100, establishing legislative salaries at \$8,400 per year. The additional appropriation for these salary increases was Section 28 of Conference Committee Substitute for House Bill No. 877, in the amount of \$525,000.00.

"In view of Section 13, Article VII, of the Missouri Constitution, are members of the General Assembly whose terms expire from January 1968 to January 1970 entitled to receive the salary provided by House Bill No. 100 now? Is the salary provision of House Bill No. 100 equally applicable to all Senators and Representatives, including holdover Senators, and what will be the effective date for payment of the \$8,400 per year compensation?

Section 16 of Article III, of the Constitution of Missouri, provides in part as follows:

"Senators and representatives, until otherwise provided by law, shall receive from the state treasury as salary the sum of one hundred and twenty-five dollars per month. No law fixing the compensation of members of the general assembly shall become effective until the first day of the regular session of the general assembly next following the session at which the law was enacted."

Pursuant to such constitutional provision, House Bill No. 100 was enacted by the 74th General Assembly repealing Section 21.140, RSMo Supp., 1965, and enacting in lieu thereof, Section 21.140, providing that the annual salary of Senators and Representatives shall be \$8,400.

Under the unequivocal language of the second sentence of Section 16 of Article III of the Constitution, it is clear that a law passed by the 74th General Assembly fixing the compensation of Senators and Representatives shall not become effective before the first day of the regular session of the 75th General Assembly.

Since no date than the first day of the regular session of the 75th General Assembly is set forth in House Bill No. 100, such Law shall become effective on the first day of the regular session of the 75th General Assembly. Section 20 of Article III of the Constitution of Missouri provides that the general assembly shall meet in regular session on the first Wednesday after the first day of January following each general election. Since the first day of January, 1969 will be Wednesday, the regular session of the 75th General Assembly will convene on the second Wednesday of January, which will be January 8, 1969, and such date will be the effective date of House Bill No. 100, of the 74th General Assembly.

Section 29 Article III of the Constitution of Missouri provides that no law passed by the General Assembly shall take effect until ninety days after adjournment or after a thirty day recess except appropriation acts or emergency acts. However, such constitutional provision has only the effect of prohibiting an effective date of laws other than appropriation or emergency acts prior to ninety days after adjournment or after a thirty day recess and does not make such laws effective on the ninetieth day after adjournment or after a thirty day recess.

The Supreme Court of Missouri en banc, discussed the provisions of what is now Section 29 of Article III of the Constitution in the Case of State ex rel. Brunjes vs. Bockelman, 240 SW 209, holding that a law may have an effective date at a time later than ninety days after adjournment of the General Assembly at which it was passed stating l.c. 211 and 212:

"The Missouri Constitution (1875, section 36 of article 4) places no inhibition upon the Legislature as to fixing a future date for a law to become effective. It prohibits them from becoming effective upon their passage and approval, except in excepted cases. The Legislature has often asserted its right to pass a law to become effective in the future, and our cases seemingly have approved them. State v. Brassfield, 81 Mo. 151, 51 Am. Rep. 234; State v. Orrick, 106 Mo. 111, 17 S.W. 176, 329; State ex rel. v. Edwards, 136 Mo. 360, 38 S.W. 73."

The salary increase provided for in House Bill No. 100, of the 74th General Assembly will become applicable on January 8, 1969, to all Senators and Representatives including so-called holdover Senators, that is, those Senators elected at the November, 1966, election for four year terms.

We assume, for the purposes of this opinion only, that Senators and Representatives are "state officers" within the meaning of Section 13 of Article VII of the Constitution of Missouri but do not rule on such question in view of our holding that all Senators are entitled to the increased compensation beginning with the effective date of House Bill No. 100. Such Section 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."

The first sentence of Section 16, Article III of the Constitution contains no limiting language but refers to "senators and representatives" which reference is to all Senators and Representatives and provides they shall receive the compensation provided for in the Constitution "until" otherwise provided by law. When a law is passed fixing the compensation of legislators, the compensation provided for in such law becomes the amount of compensation to which all Senators and Representatives are entitled just as if the amount of such compensation were specifically set forth in the Constitution itself. The obvious intent of Section 16 of Article III is to provide a uniform compensation for all Senators.

The provisions of Section 13, Article VII of the Constitution are in conflict with the provisions of Section 16, Article III of the Constitution under our assumption that legislators are "state officers" because the provisions of Section 13, Article VII purport to prohibit increased compensation for Senators elected in 1966, during the four year terms for which they were elected while the provisions of Section 16, Article III authorize a change of compensation for such Senators beginning January 8, 1969.

When constitutional provisions are in conflict, the rule of construction applicable, is that the most recent amendment of the Constitution prevails. In the Case of State ex inf. McKittrick vs. Bode, 342 Mo., 162, 113 SW2d, 805, the Supreme Court of Missouri en banc held that a constitutional amendment adopted after an existing section of the Constitution prevails where there is a conflict between the two constitutional provisions and held that the amendment in such case constitutes an exception to the previously existing constitutional provision, stating l.c. 808:

"We are familiar with the rule that the provisions of the Constitution should be harmonized. However, if said paragraph is unambiguous and in direct conflict with section 10, 'the amendment must prevail because it is the latest expression of the will of the people.'"

In the Case of State ex rel. Board of Fund Commissioners vs. Holman, 296 SW2d, 482, the Supreme Court of Missouri en banc said l.c. 491:

"And of course 'a clause in a constitutional amendment will prevail over a provision of the constitution or earlier amendment inconsistent therewith, since an amendment to the constitution becomes a part of the fundamental law, and its operation and effect cannot be limited or controlled by previous constitutions or laws that may be in conflict with it.' 16 C.J.S., Constitutional Law, §26, p. 99: State ex rel. Lashly v. Becker, 290 Mo. 560, 235 S.W. 1017, 1020."

Section 13 of Article VII of the Constitution is part of the Constitution of Missouri adopted February 27, 1945, while Section 16, Article III of the Constitution was adopted as an amendment to the Constitution November 8, 1960. Therefore, the provisions of Section 16, Article III prevail over the conflicting provisions of Section 13, Article VII.

Another familiar Rule of construction is that the specific provisions of a Constitution prevail over contrary general provisions, the specific provisions constituting an exception to the contrary general provisions. This Rule is set forth in 16 C.J.S., Section 25, Page 65, as follows:

"When general and special provisions of a constitution are in conflict, the special provisions should be given effect to the extent of their scope, leaving the general provisions to control instances where the special provisions do not apply."

"Where there is a conflicting specific and general provision, or a particular intent which is incompatible with a general intent, the specific provision or particular intent will be treated as an exception, and should receive a strict, but reasonable construction. * * * *"

Section 16 of Article III relates only to compensation of legislators and is specific while Section 13 of Article VII relates to compensation and terms of state, county and municipal officers, and is general.

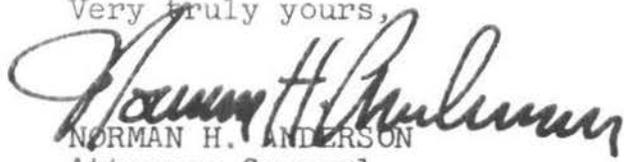
The provisions of Section 16 of Article III, therefore prevail over the provisions of Section 13 of Article VII, insofar as compensation of legislators is concerned.

CONCLUSION

It is the opinion of this office that the provisions of House Bill No. 100, of the 74th General Assembly providing for a salary of \$8,400 per year for Senators and Representatives will become effective on the first day of the regular session of the 75th General Assembly, January 8, 1969. All Senators and Representatives including holdover Senators will receive the compensation provided for in House Bill No. 100, beginning on such date.

The foregoing opinion which I hereby approve was prepared by my assistant, Mr. C. B. Burns, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General