

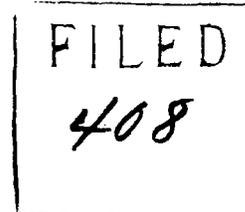
COUNTY COURTS:  
SHERIFFS:  
COLLECTORS:  
COMPENSATION:  
LEGISLATION:  
AUDITOR:

(1) House Bill 116 of the 75th General Assembly which provides a mode of fixed compensation for judges of county courts of certain third class counties does not constitute an increase in the compensation of such officers and is effective October 13, 1969. The provision of said bill increasing the compensation of judges of the county courts of second class counties is not effective during the term of such judges. (2) House Bill No. 264 of the General Assembly authorizing a uniform allowance to sheriffs and deputy sheriffs does not constitute an increase in compensation during the term of such officers and is therefore effective October 13, 1969. Said bill also provides for additional compensation to sheriffs of class two counties as compensation for additional services by such sheriffs and therefore is not an increase in compensation within the meaning of Section 13, Article VII, of the Constitution and is effective October 13, 1969. (3) House Bill No. 399 of the 75th General Assembly provides that the county collector of third and fourth class counties may retain an increased percentage of fees and commissions for deputy and clerical hire. Such increase is not to the benefit of such collectors, does not constitute an increase in compensation during the term of the collector or his deputies within the prohibition of Section 13, Article VII, of the Constitution and is effective October 13, 1969. Such increase may be used in full for the fiscal year ending February 28, 1970.

OPINION NO. 408

October 9, 1969

Honorable Haskell Holman  
State Auditor  
Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Holman:

This opinion is in answer to your questions concerning several acts passed by the 75th General Assembly, i.e.:

- "1. Are the provisions of House Bills Nos. 116, 264 and 399, effective and operational on and after October 13, 1969?
- "2. Assuming an affirmative answer regarding H.B. 116. What tests, if any, may be made in determining whether the drawing of annual compensation provided for in counties having assessed valuations in excess of twenty

Honorable Haskell Holman

million dollars would be violative of Article 7, Section 13, of the Constitution of Missouri if drawn by the judges presently in office?

"3. What portion of the seventy percent allowance for deputy and clerical hire provided by H.B. 399 may be used by the collectors during the fiscal year ending February 28, 1970?"

The Missouri Constitution, Section 13, Article VII, 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."

With respect to the effective dates of acts the Missouri Constitution, Section 29, Article III, provides:

"No law passed by the general assembly shall take effect until ninety days after the adjournment of the session at which it was enacted, except an appropriation act or in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly shall otherwise direct by a two-thirds vote of the members elected to each house, taken by yeas and nays; provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess."

Further, with respect to the effective dates, Section 1.130, RSMo 1959, provides:

"A law passed by the general assembly takes effect ninety days after the adjournment of the session at which it is enacted; but if the general assembly recesses for thirty days or more, it may prescribe by joint resolution that laws previously passed and not effective take effect ninety days from the beginning of the recess, subject to the following exceptions:

(1) A law necessary for the immediate preservation of the public peace, health or

Honorable Haskell Holman

safety, which emergency is expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house the vote to be taken by yeas and nays, and entered on the journal, or a law making an appropriation for the current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, takes effect as of the hour and minute of its approval by the governor; which hour and minute may be indorsed by the governor on the bill at the time of its approval;

(2) In case the general assembly, as to a law not of the character herein specified, provides that the law takes effect on a date in the future subsequent to the expiration of the period of ninety days herein mentioned the law takes effect on the date thus fixed by the general assembly;

(3) In case the general assembly provides that any law takes effect as provided in subdivision (1) of this section, the general assembly may provide in such law that the operative date of the law or parts of the law takes effect on a date subsequent to the effective date of the law."

House Bill No. 116 provides:

"Section 1. Sections 49.090, RSMo 1959 and 49.110, RSMo Supp. 1967, are repealed and two new sections enacted in lieu thereof, to be known as sections 49.090 and 49.110, to read as follows:

49.090. In counties of the second class, the judges of the county court shall receive as compensation an annual salary of seven thousand five hundred dollars.

49.110. In all counties of the third class having an assessed valuation of more than twenty million dollars and less than thirty million dollars the judges of the county court shall receive for their services three thousand dollars a year to be paid in equal monthly installments, and in all counties of the third class having an assessed value of

Honorable Haskell Holman

thirty million dollars or more the judges shall receive for their services four thousand dollars per year, paid in equal monthly installments. In all other counties of the third class the judges of the county court shall receive for their services fifteen dollars per day for each of the first ten days in any month that they are necessarily engaged in holding court and shall receive ten dollars per day for each additional day in any month that they are necessarily engaged in holding court, and all judges of the county court in all third class counties shall receive ten cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court and for all other necessary travel on official business in the personal automobile of the judge presenting the claim. The per diem compensation herein fixed shall be paid at the end of each month and the mileage compensation shall be paid at the end of each month on presentation of a bill, by the respective county judge, setting forth the number of miles necessarily traveled."

Section 49.090, RSMo 1959, provides:

"In all counties of the second class, the judges of the county court shall receive for their services, an annual salary of six thousand dollars. This salary is in lieu of all fees and other compensation heretofore allowed the judges."

It is obvious that Section 49.090 as amended by House Bill No. 116 provides for an increase in the annual salary of judges of the county court in counties of the second class in violation of Section 13, Article VII of the Constitution, and therefore cannot become effective during the term of such county court judges. Folk vs. City of St. Louis, 250 Mo. 116, 157 S.W. 71 (1913).

The amendments to Section 49.110 as provided in House Bill No. 116 relating to counties of the third class having an assessed valuation of more than \$20,000,000 and less than \$30,000,000 fixes the compensation of the judges of such county courts for their services at \$3,000 a year to be paid in equal monthly installments and in all counties of the third class having an assessed valuation of \$30,000,000 or more the compensation of such county judges is fixed at \$4,000 per year payable in equal monthly installments.

Honorable Haskell Holman

The remainder of the section remains unchanged and continues to provide that in all other counties of the third class the judges of the county court shall receive for their services \$15 per day for each of the first ten days in any month that they are necessarily engaged in holding court and \$10 per day for each additional day in the month that they hold court.

While the amendments fixing the compensation of such county judges according to assessed valuation provides a different mode of determination of compensation from that previously used in determining the amount to be paid, it should be noted that the maximum amount that such judges can presently receive as compensation is greater than \$4,000 per year.

In our view therefore, such compensation is not in violation of Section 13, Article VII, of the Constitution, and becomes effective October 13, 1969. State ex rel Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106 (1917).

The other provisions of Section 49.110, House Bill No. 116, relating to judges of the county court in other counties of the third class remains unchanged and do not violate said article.

With respect to House Bill No. 264, said House Bill provides:

"Section 1. In each county of this state the sheriff and each full-time deputy sheriff shall receive twenty-five dollars per month, as a uniform allowance, to be paid to him monthly out of the county treasury at the discretion of the county court. This allowance shall apply only to sheriffs and deputy sheriffs who wear an official uniform in performance of their duty.

"Section 2. 1. Sheriffs in counties of the second class shall, in addition to other duties imposed upon them by law, aid and assist the jury commissioners in such counties by conducting investigations into the identity of prospective jurors summoned for jury duty, and upon request of the board of jury commissioners, make and file a report with the board setting out the results of the investigation.

2. In addition to the salary, travel expenses, reimbursement expenses, and any other compensation now provided by law, the sheriff in each county of the second class, for the performance of the duties provided in this section, shall receive the sum of three thousand dollars

Honorable Haskell Holman

per year, payable in twelve equal monthly installments out of the county treasury."

Section 1 of House Bill No. 264 provides an allowance of \$25 per month as a uniform allowance to the sheriffs and each full-time deputy sheriff payable monthly out of the county treasury at the discretion of the county court. The allowance applies only to sheriffs and deputy sheriffs who wear an official uniform in the performance of their duty. We do not consider this as compensation and, therefore, it does not constitute a violation of Section 13, Article VII. Macon County vs. Williams, 284 Mo. 477, 224 S.W. 835 (1920).

Section 2 of House Bill No. 264 provides that the sheriffs in the counties of the second class will have additional duties imposed upon them and for such additional duties will receive the additional sum of \$3,000 per year payable out of the county treasury. This is a new section; and since it does in fact impose additional duties for the compensation, it cannot be said that the provision violates Section 13, Article VII of the Constitution. Mooney vs. County of St. Louis, 286 S.W.2d 763 (1956).

House Bill No. 399 provides:

"Section 1. Section 52.280, RSMo 1959, is repealed and one new section enacted in lieu thereof, to be known as section 52.280 to read as follows:

52.280. 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 seventy percent 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."

The repealed section, Section 52.280, provided that the collector in counties of the third and fourth classes could retain for the payment of deputy and clerical hire a sum not to exceed 25 per cent of the maximum amount of fees and commissions which they are permitted to retain by Section 52.260 and Section 52.270, RSMo 1959. In our Opinion No. 102, 1966, to the Honorable C.M. Bassman, enclosed, we held that such an increase was not an increase in the

Honorable Haskell Holman

compensation of the collector and that said collector could legally use the additional amount during his term for deputy or clerical hire. Although such deputies are officers in the sense that they have like authority as the collector, they do not have a fixed term, Section 52.300, RSMo 1959; and therefore are not themselves within the constitutional prohibitions.

The increase is effective October 13, 1969, and may be used in full for such hire for the fiscal year ending February 28, 1970.

#### CONCLUSION

It is the opinion of this office that:

1. House Bill 116 of the 75th General Assembly which provides a mode of fixed compensation for judges of county courts of certain third class counties does not constitute an increase in the compensation of such officers and is effective October 13, 1969. The provision of said bill increasing the compensation of judges of the county courts of second class counties is not effective during the term of such judges.

2. House Bill No. 264 of the General Assembly authorizing a uniform allowance to sheriffs and deputy sheriffs does not constitute an increase in compensation during the term of such officers and is therefore effective October 13, 1969. Said bill also provides for additional compensation to sheriffs of class two counties as compensation for additional services by such sheriffs and therefore is not an increase in compensation within the meaning of Section 13, Article VII, of the Constitution and is effective October 13, 1969.

3. House Bill No. 399 of the 75th General Assembly provides that the county collector of third and fourth class counties may retain an increased percentage of fees and commissions for deputy and clerical hire. Such increase is not to the benefit of such collectors, does not constitute an increase in compensation during the term of the collector or his deputies within the prohibition of Section 13, Article VII, of the Constitution and is effective October 13, 1969. Such increase may be used in full for the fiscal year ending February 28, 1970.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH  
Attorney General