

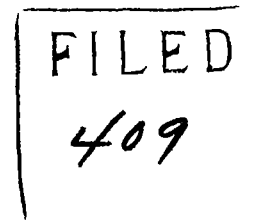
COUNTIES: With respect to the provisions of
COUNTY OFFICERS: Conference Committee Substitute for
OFFICERS: House Substitute for Senate Bill No.
COUNTY CLERKS: 13 of the 75th General Assembly, (1)
COUNTY COURTS: Section 50.810 of said bill relating
COMPENSATION: to preparation of county financial
FEES: statements is effective January 1,
COUNTY FINANCIAL STATEMENT: 1971, and effective also on that date
AUDITOR: are the amendments to Section 51.300
which provides that the compensation

of county clerks of county courts of the second, third and fourth classes be computed upon the variables of population and assessed valuation and that said compensation constitutes the entire compensation for services performed by said clerk except for fees for the issuance of fish and game licenses or permits. After the effective date of said section, the county clerks will not be entitled to receive any additional amount for the service performed under Section 50.810 as amended by the bill. The county court may contract with individuals, corporations or associations for the performance of said services in an amount that the court deems reasonable and just; (2) Section 1 of said bill provides that in counties of second, third and fourth classes which have adopted the provisions of Chapters 114 and 116, RSMo, providing for voter registration, the county clerk shall perform the services specified therein and for such services shall, in addition to the compensation now provided by law, receive the sum of \$1,500 per year. Section 1 is effective October 13, 1969. However, such services are to be performed annually and before May 10th. Accordingly, these services could not be performed for the year 1969, and such county clerks are not entitled to such compensation for the year 1969. Such services can be performed for the year 1970 and such compensation is effective for the year 1970, but not thereafter in view of the effective date of termination of the provisions for increased compensation which is December 31, 1970.

OPINION NO. 409

October 9, 1969

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



Dear Mr. Holman:

This opinion is in response to your questions with respect to the Conference Committee Substitute for House Substitute for

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Senate Bill No. 13 of the 75th General Assembly relating to county clerks in second, third and fourth class counties concerning the following specific questions:

"1. What compensation, if any, may the county court pay the county clerk or any other person employed to prepare the county financial statement as required by the Act? If the county clerk is so designated and employed to prepare the statement, would the compensation paid therefor, if any, be returnable to the county as an accountable fee?

"2. May the compensation provided for the designated county clerks for the additional duties enumerated in Section 1 of the Act be paid to such clerks for the year 1969, inasmuch as the duties required to be performed could not be discharged within the prescribed time limit set forth in the Act?

"In the event the county clerks are entitled to such compensation for the year 1969, will they be entitled to the full \$1,500.00 on the pro rata portion thereof as the period October 13 to December 31 bears to the whole year?"

That portion of the Bill which is relative to your first question is amendatory to Section 50.810, RSMo 1959, and states as follows:

"1. The statement shall be set in the standard column width measure that will take the least space and the publisher shall file two proofs of publication with the county court and the court shall forward one proof to the state auditor and shall file the other in the office of the court. The county court shall not pay the publisher until said proof of publication is filed with the court and shall not pay the person designated to prepare the statement for the preparation of the copy for said statement until the state auditor shall have notified the court that said proof of publication has been received and that it complies with the requirements of this section.

"2. The statement shall be spread on the record of the court and for this purpose the publisher shall be required to furnish the court with at

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least two copies of said statement that the same may be pasted on the record.

"3. The state auditor shall notify the county treasurer immediately of the receipt of the proof of publication of the statement in this section required. After the first of April of each year after the effective date of this law the county treasurer shall not pay or enter for protest any warrant for the pay of any judge of any county court until notice is received from the state auditor that the proof of publication herein provided for has been filed. Any county treasurer paying or entering for protest any warrant for any judge of the county court prior to the receipt of such notice from the state auditor shall be liable on his official bond therefor.

"4. Within twelve months after the effective date of this law the state auditor shall prepare sample forms for financial statements and shall mail the same to the county clerks of the several counties in this state, but failure of the auditor to supply such form shall not in anywise excuse any person from the performance of any duty imposed by this law. If the county court shall employ any person other than a bonded county officer to prepare the financial statement herein required the county court shall require such person to give bond with good and sufficient sureties in the penal sum of one thousand dollars for the faithful performance of his duty. If any county officer or other person employed to prepare the financial statement herein provided for shall fail, neglect, or refuse to, in any manner comply with the provisions of this law he shall, in addition to other penalties herein provided, be liable on his official bond for dereliction of duty."

Present Section 50.810 states:

"1. The statement shall be set in the standard column width measure that will take the least space and the publisher shall file two proofs of publication with the county court and the court shall forward one proof to the state auditor and shall file the other in the office of the court. The county court shall not pay the

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publisher until said proof of publication is filed with the court and shall not pay the person designated to prepare the statement for the preparation of the copy for said statement until the state auditor shall have notified the court that said proof of publication has been received and that it complies with the requirements of this section.

"2. The statement shall be spread on the record of the court and for this purpose the publisher shall be required to furnish the court with at least two copies of said statement that the same may be pasted on the record. For the preparation of the copy for the statement the court may allow a sum not less than ten cents and not to exceed thirty cents for every hundred words and figures, which sum, if allowed to the clerk of the court, shall be in addition to the salary or fees allowed him by law, and no pay shall be allowed for pasting a printed copy in the record. In submitting bill to the county court the person preparing the statement and the publisher shall itemize the amount as properly chargeable to the several funds and the county court shall pay out of each fund in the proportion that each item bears to the total cost of preparing and publishing said statement and shall issue warrants therefor; provided, any part not properly chargeable to any specific fund shall be paid from the fund from which officers salaries are paid.

"3. The state auditor shall notify the county treasurer immediately of the receipt of the proof of publication of the statement in this section required. After the first of April of each year after the effective date of this law the county treasurer shall not pay or enter for protest any warrant for the pay of any judge of any county court until notice is received from the state auditor that the proof of publication herein provided for has been filed. Any county treasurer paying or entering for protest any warrant for any judge of the county court prior to the receipt of such notice from the state auditor shall be liable on his official bond therefor.

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"4. Within twelve months after the effective date of this law the state auditor shall prepare sample forms for financial statements and shall mail the same to the county clerks of the several counties in this state, but failure of the auditor to supply such form shall not in anywise excuse any person from the performance of any duty imposed by this law. If the county court shall employ any person other than a bonded county officer to prepare the financial statement herein required the county court shall require such person to give bond with good and sufficient sureties in the penal sum of one thousand dollars for the faithful performance of his duty. If any county officer or other person employed to prepare financial statement herein provided for shall fail, neglect, or refuse to, in any manner comply with the provisions of this law he shall, in addition to other penalties herein provided, be liable on his official bond for dereliction of duty."

It therefore appears that in amending this section the legislature did not reenact that portion of Paragraph 2 which specifically set out the compensation for preparing the financial statement and required that the "funds" bear a pro-rata charge.

We further note this Bill also amends Section 51.300, RSMo Supp. 1967, to provide for an annual salary for clerks of the county court for each county of the second, third and fourth class, which salary shall be equal to the sum of two variable amounts, one based upon the population of the county and the other upon the valuation of the county. The amendment, Paragraph 4 of Section 51.300 as contained in the said Bill also states that:

"The salary provided in this section shall be the total compensation received by the county clerk, except that he may retain any fees to which he is entitled for services performed in the issuance of fish and game licenses or permits. Any other fees received by him shall be deposited in the county treasury or as provided by law. His total annual salary, excluding the only allowable fees of fish and game licenses or permits above, shall be determined on or before January 1, 1971, and each year thereafter. The county population shall be based on the last federal decennial census, and the assessed valuation of the county shall be based upon the

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last available report of the state tax commission."

This Bill also provides that the repeal of Sections 50.810, 51.360 and 51.400, RSMo 1959, and of Sections 51.300 and 51.350, RSMo Supp. 1967, and that the effective date of the sections enacted in lieu thereof to be known as Sections 50.810 and 51.300 shall be January 1, 1971.

Clearly, the Bill contemplates that the clerks of the county court of the second, third and fourth classes shall receive certain and definite compensation except with respect to fees for the issuance of fish and game licenses or permits and that all other fees will be paid into the county treasury or as provided by law.

In partial answer to your first question therefore, the county court has no authority to make any additional payment to the county clerks for the preparation of the statement as provided in the bill amending Section 50.810.

Clearly, a public officer cannot claim compensation for official duties unless he can point out a statute authorizing such payment. Nodaway County vs. Kidder, 344 Mo. 795, 129 S.W.2d 857.

In further answer to your first question, we note that the county court under the bill is authorized to employ some person to prepare the statement. The word "person" also applies to "bodies politic and corporate, and to partnerships and other unincorporated associations." Section 1.020 (7), RSMo 1959.

We assume that the legislature did not unintentionally omit provisions for the precise amount of payment for the preparation for the financial return and therefore that they intended that the county court may contract for such services with persons other than county officers or employees as in the case of any other contract for personal services for any amount of compensation which the county court deems just and reasonable. Further, there is no longer any authority to pro rate the charges.

With respect to your second question, the additional duties that you speak of are set out in what is designated as Section 1 on page 5 of the bill.

Section B on page 6 of the bill specifically states that the effective date of Section 1 shall be October 13, 1969.

Section 1 itself provides:

"1. In counties of the second, third, and fourth classes, which have adopted the provisions of chapters 114 and 116, RSMo, the

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county clerk shall annually, on or before May tenth, inspect all voting precincts in the county, review the described boundary lines, and survey the number of voters in each precinct measured by the vote at the last preceding presidential election, and within thirty days after the conclusion of such inspection, present a signed report to the county court and the county chairman of the two political parties receiving the largest number of votes in the last presidential election, detailing changes, alterations, and additions which appear to be necessary for the convenience of the voters.

"2. For the additional duties imposed by section 1 of this act, the county clerk shall receive in addition to the compensation now provided by law the sum of one thousand five hundred dollars per year.

"3. The county clerk shall be reimbursed for his reasonable and necessary travel expenses expended in the performance within the county of the duties imposed by this section in an amount to be determined by the county court, not to exceed ten cents per mile traveled."

Section 2, page 5 of the bill provides:

"Notwithstanding other provisions of this act to the contrary the salary of county clerks of counties of the fourth class including all fees shall not be in excess of five thousand five hundred dollars."

It should be emphasized that the first part of Paragraph 1 of Section 1 states that the county clerk "shall annually, on or before May 10th," perform such services. "Annually" means "1. Reckoned by the term of a year . . . 2. Occurring once each year." Webster's New International Dictionary, Second Edition (1950), p. 108.

Inasmuch as the duties contemplated by Section 1 must be performed before May 10th but also must be performed annually, it is our view that Section 1 of the bill does not contemplate that any such duties will be performed during the year 1969; and as a consequence, no compensation can be paid during 1969 as the payment

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of such compensation during 1969 would constitute an increase of the compensation of the officer during his term without an additional increase in duties. We note also that Section C of page 6 of the bill provides that the provisions of Subsections 2 and 3 of Section 1 shall terminate December 31, 1970. The county clerk in counties of the second, third or fourth classes who perform the services set out under Section 1 of the bill will receive the additional compensation for such work in 1970, but not in 1969, and not in 1971 or thereafter.

The payment of additional compensation for additional services is not in violation of Section 13, Article VII of the Constitution of Missouri which prohibits an increase in compensation of officers. Mooney vs. County of St. Louis, 286 S.W.2d 763 (1956).

CONCLUSION

It is, therefore, the opinion of this office with respect to the provisions of Conference Committee Substitute for House Substitute for Senate Bill No. 13 of the 75th General Assembly that:

(1) Section 50.810 of said bill relating to preparation of county financial statements is effective January 1, 1971, and effective also on that date are the amendments to Section 51.300 which provides that the compensation of county clerks of county courts of the second, third and fourth classes be computed upon the variables of population and assessed valuation and that said compensation constitutes the entire compensation for services performed by said clerk except for fees for the issuance of fish and game licenses or permits. After the effective date of said section, the county clerks will not be entitled to receive any additional amount for the service performed under Section 50.810 as amended by the bill. The county court may contract with individuals, corporations or associations for the performance of said services in an amount that the court deems reasonable and just;

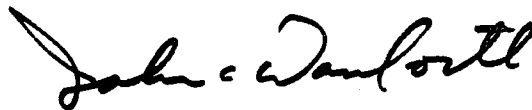
(2) Section 1 of said bill provides that in counties of second, third and fourth classes which have adopted the provisions of Chapters 114 and 116, RSMo, providing for voter registration, the county clerk shall perform the services specified therein and for such services shall, in addition to the compensation now provided by law, receive the sum of \$1,500 per year. Section 1 is effective October 13, 1969. However, such services are to be performed annually and before May 10th. Accordingly, these services could not be performed for the year 1969, and such county clerks are not entitled to such compensation for the year 1969. Such services can be performed for the year 1970 and such compensation is effective for the year 1970, but not thereafter in view of the effective date

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of termination of the provisions for increased compensation which is December 31, 1970.

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

Yours very truly,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General