

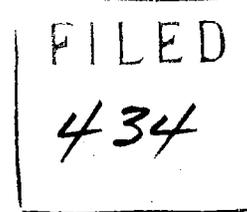
COMMON PLEAS COURTS:
COMPENSATION:
LEGISLATION:
AUDITOR:

The clerk of the Hannibal Court of Common Pleas shall be compensated for the period October 13, 1969, to the end of his present term, December 31, 1970, under the provisions of existing law and of Section 483.455 of House Bill No. 74 of the 75th General Assembly. After such date, he will be compensated as provided in Section 50.335 of House Bill No. 119 of the 75th General Assembly.

OPINION NO. 434

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 concerning House Bills Nos. 74 and 119 as passed by the 75th General Assembly, to wit:

"1. Are the provisions of the aforesaid Bills effective and operational on and after October 13, 1969?

"2. Is the Clerk of the Hannibal Court of Common Pleas to draw his compensation under H.B. 74 of the 75th General Assembly and Section 483.470, RSMo., 1959 or under H.B. 119 of the 75th General Assembly and Section 483.470, RSMo 1959?

"3. Would the provisions of Article 7, Section 13 of the Constitution of Missouri bar the officials enumerated in the above mentioned Bills from being compensated in the amounts provided therein during their present terms of office when such compensation exceeds that presently provided by law?"

House Bill 74 states as follows:

"483.455. 1. The clerk of the Hannibal court of common pleas shall receive for his services, annually, the sum of two thousand dollars.

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"2. For the additional duties imposed upon him by section 514.480, RSMo, the clerk shall receive, annually, the sum of three thousand seven hundred dollars.

"514.480. 1. On the first day of each month each of said circuit clerks shall pay the entire fund created by said deposits during the preceding month to the judge or judges of the circuit court of the county in which such deposits were made, or to such person as the judge or judges of the circuit court of said county may designate as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the judge or judges of the circuit court of any such county for the maintenance and upkeep of the law library maintained by the bar association in any such county or in an adjoining county, or such other law library in any such county, or in an adjoining county, as may be designated by the judge or judges of the circuit court of any such county, provided that the judge or judges of the circuit court of any such county, and the officers of all courts of record of any such county and all attorneys licensed to practice law in any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied.

"2. The clerk of any court of common pleas shall, in addition to other duties imposed by law, act as treasurer of said fund for his court, and he shall, at the direction of the judge, or at the direction of the county bar association law library committee, if the judge so directs, expend from the fund for the purpose of maintaining a law library for the court. The clerk shall keep a record of all fees received and expenditures made, and he shall at least once each year present a report of same to the judge of the court and to all members of the county bar association."

House Bill 119 enacts a new section designated as Section 50.335 and Paragraph 1 of that section states in part as follows:

"In all counties having a population of less than five hundred thousand and an assessed valuation of less than three hundred million dollars, the recorder of deeds, the circuit clerk, the circuit clerk-ex officio recorder of deeds, or the clerk of the Court of

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Common Pleas, as the case may be, shall receive as total compensation for all services performed by him an annual salary which shall be computed on a combination population assessed valuation basis as set forth in the following schedule."

The first paragraph of amended Section 483.455 as contained in House Bill 74 contains the same provisions as repealed Section 483.455, RSMo Supp. 1967. Paragraph 2 of that section allows the clerk of the Hannibal Court of Common Pleas the additional sum of \$3,700 for additional duties imposed upon him by Section 514.480. House Bill 74 repeals and reenacts Section 514.480 and retains the same provisions in Paragraph 1 thereof, and the same provisions of Paragraph 2 thereof, except that the first sentence of Paragraph 2 is amended to exclude the reference to any court of common pleas "which has county-wide jurisdiction" so that Paragraph 2 now applies to any court of common pleas without regard to whether or not it has county-wide jurisdiction. We note that the Cape Girardeau Court of Common Pleas has power and jurisdiction within the city, township and county of Cape Girardeau, Section 480.020, RSMo 1959, and that the Hannibal Court of Common Pleas has jurisdiction within the limits of Mason and Miller Townships in the county of Marion, Section 480.200, RSMo 1959. Paragraph 2 of Section 514.480, RSMo 1959, therefore presently applies only to the court of common pleas of Cape Girardeau; but under the provisions of House Bill 74, applies also to the court of common pleas of Hannibal.

Therefore, House Bill 74 imposes additional duties upon the clerk of the Hannibal Court of Common Pleas and accordingly the additional compensation provided for therein will be effective as of October 13, 1969, inasmuch as the provisions of the Constitution, Section 13 of Article VII, prohibiting the increase in compensation for such officers in their term would not apply by reason of the additional duties imposed. Mooney vs. County of St. Louis, 286 S.W.2d 763.

It is obvious that the provisions with respect to the compensation of the clerk of the Hannibal Court of Common Pleas as provided for in House Bill 74, Section 483.455 conflicts head-on with the provisions of House Bill 119, Section 50.335 thereof.

It is competent to judicially notice the history of the legislation. State ex rel Karbe vs. Bader, 336 Mo. 259, 78 S.W.2d 835 (1934).

House Bill 74 was passed by the House on February 11, 1969, by the Senate on June 11, 1969, and was signed by both the Speaker of the House and presiding officer of the Senate on June 16, 1969.

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It was approved by the Governor on June 18, 1969.

House Bill 119 was passed by the House on March 5, 1969, and by the Senate on June 24, 1969. It was signed by the Speaker of the House on July 7, 1969; signed by the presiding officer of the Senate on July 15, 1969; and was approved by the Governor on August 4, 1969. It is noteworthy also that House Bill 119 did not repeal Section 483.470, RSMo 1959, which allows the clerks of the courts of common pleas the sum of three hundred dollars per annum as compensation for the performance of their duties as members and ex officio clerks of the Board of Jury Commissioners for their respective courts.

House Bills 74 and 119 both repealed Section 483.455, RSMo Supp. 1967. House Bill 119 did not repeal Section 514.480; although as we stated, House Bill 74 did repeal this section and provides a new section in lieu thereof.

We are able to find only one statutory provision with respect to the effect of the amendment of a section by several acts and of conflicts with revising acts. Section 3.065 as amended by House Bill 685 of the 75th General Assembly provides in full as follows:

"1. If any section of the revised statutes, supplement or pocket part, or of any act of the general assembly is amended or reenacted by more than one act at the same session of the general assembly, the section may be incorporated in the revised statutes edition, supplement or pocket part as amended or altered by the several acts if the amendments, changes or alterations can be incorporated in the section in such manner as to make the section intelligible. In any such case the revisor of statutes shall insert a note at the end of the section explaining the insertions or omissions accomplished by the various enactments. If the section cannot be made intelligible by incorporation of the amendments the section as enacted by each of the several acts shall be published in full.

"2. If any section of existing law affected by a revision act is amended, reenacted or repealed by other acts passed at the same regular or extra session of the general assembly, the revision act shall be given effect only to the extent that its provisions do not conflict with the changes made in the existing law by the other acts and, in accordance with this provision, the section shall be shown as

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repealed or incorporated in the statutes as amended or altered by the several acts passed affecting it. The revisor of statutes, in such cases, shall insert an explanatory note at the end of the section indicating the changes made in its provisions by the several enactments."

We do not see, however, how the conflict presented by these respective provisions can be resolved under the provisions of the above section.

It is true that Section 483.455 as provided in House Bill 74 has specific reference to the Hannibal Court of Common Pleas whereas the provisions of Section 50.335 as provided in House Bill 119 pertains to all courts of common pleas.

In our view, since the additional compensation provisions of House Bill 74 are in conflict with the total compensation provisions of House Bill 119 and the two cannot be reconciled, the provisions of House Bill 74 providing for such additional compensation, although effective October 13, 1969, become invalid at such time as the total compensation provisions of House Bill 119 become applicable.

With respect to the provisions of Section 483.470, RSMo 1959, we note that this section was not expressly repealed by the provisions of either House Bill 119 or House Bill 74. This section, as we stated, provides for additional compensation for the clerks for the courts of common pleas as compensation for the performance of their duties as members and ex officio clerks of the Board of Jury Commissioners for their respective courts. The provisions of Section 483.470, RSMo 1959, however, are in conflict with the "total compensation" provisions of Section 50.335 as provided in House Bill 119. Therefore, although repealed by implication are not favored, Section 483.470, RSMo 1959, is repealed by implication at such time as Section 50.335 (House Bill 119) becomes applicable.

In our Opinion No. 399, 1969, copy enclosed, to the Honorable William S. Brandom, we considered the effective date of House Bill 119 with respect to the new total compensation schedule as provided in Section 50.335 pertaining to such clerks of the common pleas. We concluded therein that the clerks of the courts of common pleas will not receive the compensation provided by House Bill 119 during their present term if the compensation for such officers provided for by such bill is greater than is now provided by statute for such officers. The total compensation for such officers to be considered is the total statutory salary provided before the effective date of House Bill 119 of the 75th General

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Assembly, plus the additional compensation provided by Section 483.455 of House Bill No. 74.

With respect to the Clerk of the Court of Common Pleas of Hannibal, our calculations indicate that the present fixed allowances that he now receives, plus that which he will receive under Section 483.455 of House Bill No. 74, amounts to less than that which he will receive under the new total compensation schedule provisions of House Bill 119. In accordance with our Opinion No. 399, 1969, the new total compensation provisions with respect to such officer is not effective during his present term of office. Accordingly it follows that the compensation provisions of House Bill 74, Section 483.455 and the compensation provisions of Section 483.470, RSMo 1959, will be effective until the end of such clerks term of office. However, at the end of such term, the provisions of Section 50.335 of House Bill No. 119, are effective and the provisions of Section 483.470, RSMo 1959, and of Section 483.455 as provided in House Bill 74 are then ineffective.

CONCLUSION

It is therefore the opinion of this office that the clerk of the Hannibal Court of Common Pleas shall be compensated for the period October 13, 1969, to the end of his present term, December 31, 1970, under the provisions of existing law and of Section 483.455 of House Bill 74 of the 75th General Assembly. After such date, he will be compensated as provided in Section 50.335 of House Bill 119 of the 75th General Assembly.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enc: Opinion No. 399, 1969, Brandom