



OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

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December 6, 1973

OPINION LETTER NO. 235

Colonel Samuel S. Smith  
Superintendent, Missouri  
State Highway Patrol  
1510 East Elm  
Jefferson City, Missouri 65101

Dear Colonel Smith:

This letter is in response to your request for a ruling on the following question:

"If the annual salary of a member of the Missouri State Highway Patrol increases, may all five-year-service-salary increases which have been received by the member, as provided by Section 43.080, RSMo. 1969, be re-computed on the increased annual salary fixed by Section 43.070, RSMo. 1969, for the rank which the member holds?"

The relevant portion of Section 43.080, RSMo, reads as follows:

"The limitations upon the maximum salaries which may be paid under the provisions of this chapter shall not be applicable after any member of the patrol has served five years in the state highway patrol, and the superintendent is authorized and empowered, with the approval of the state highway commission, to prescribe rules and regulations providing for increases every five years in the salaries of such members beginning with

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the sixth year of service, and thereafter to fix the salaries of such members in accordance therewith; provided, however, no such five-year increase shall exceed ten percent of the maximum salary fixed for the rank which the member holds by section 43.070; . . ."

The State Auditor, interprets the provisions of such section to mean that the increase is limited to ten percent of the salary a patrol member was receiving at the time he received the longevity increase. (See, Missouri State Highway Patrol Report of the State Auditor, July 1, 1969 - July 30, 1972). For instance, assume a patrol member with sixteen years of service was promoted to corporal in his sixteenth year. His first and second longevity increases, received in years six and eleven, would amount to \$65.00 per month (10% of the monthly salary of \$650.00 per month). His third longevity increase, received in the sixteenth year would be \$70.00 (10% of the maximum monthly salary for corporal, \$700.00 per month). The total longevity increase then, is \$200.00.

The patrol's interpretation in the above hypothetical case, gives the patrolman a longevity increase of \$65.00 per month in the sixth and eleventh years. However, in the sixteenth year, when the promotion is received, the patrol recomputes the first and second longevity increases to amount to \$70.00 (10% of the corporal's salary of \$700.00 per month). In the sixteenth year, the patrol also gives the third longevity increase of \$70.00 per month. The total longevity increase is then \$210.00. The patrol has viewed the increase as a percentage increase of the salary of the rank then attained rather than a dollar amount fixed at the end of each five-year period.

Section 43.080, RSMo, states that each increase may not exceed ten percent of the maximum salary fixed by Section 43.070, RSMo, for the rank which the member holds. A patrol member with sixteen years of service under the patrol's interpretation is entitled to an increase of thirty percent (10% for each five years) of the maximum salary under Section 43.070 for the rank he then holds.

The provision for longevity increases was first enacted in 1937. The patrol's interpretation was established at that time and has not changed since. The interpretation of an ambiguous statute by the agency charged with its execution, long acquiesced in, is a factor to be given great weight and should not be disturbed unless clearly erroneous. State ex rel. Union Electric Light & Power Co. v. Baker, 293 S.W. 399, 316 Mo. 853

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(Banc 1927); State ex rel. Harline v. Public Service Commission of Missouri, 343 S.W.2d 177 (K.C.Ct.App. 1960). By statute, the regulations providing for the longevity increases were required to be approved by the State Highway Commission. Although this formal approval has apparently never been obtained; the Highway Commission, along with the legislature, has long acquiesced in the patrol's interpretation. This gives rise to an inference that the patrol's interpretation was correct. Robertson v. Manufacturing Lumbermen's Underwriters, 145 S.W.2d 134, 346 Mo. 1103 (1940).

The section authorizing the five-year increase has been amended twice. As first enacted, the provision in Section 8351, RSMo 1939, read:

"Provided, however, no such five-year increase shall exceed ten percent of the maximum salary fixed by this act."

As reenacted in 1945, this proviso read that no "five-year increase shall exceed ten percent of the maximum salary fixed by Section 8349." Section 8349 fixed the maximum salaries for the officers of the patrol and Section 8350 fixed the maximum for patrolmen. Since such provisions might have been construed to authorize an increase of ten percent of an officer's salary for a patrolman, the statute was amended in 1949 to read "ten percent of the maximum salary fixed for the rank which the member holds by Section 43.070." House and Senate Journals, 65th General Assembly of the State of Missouri, Volume 3, 1949, page 68. The only amendments to this section have related to the base amount to which the percentage is applied. The remainder of the section has been reenacted without change. The general rule of construction is that a legislature in reenacting a section is presumed to know and adopt an administrative construction. While this is not a binding rule, it is a factor to be given serious consideration. Becker v. St. Francois County, 421 S.W.2d 779 (Mo. 1967).

The ultimate aim of any statutory construction is to determine and give effect to the intent and purpose of the legislature. St. Louis County v. State Highway Commission, 409 S.W.2d 149 (Mo. 1966). It seems clear that by enacting Section 43.080, the legislature intended that two factors be taken into account in determining the salary of a patrol member: (1) rank, and (2) length of service. It seems logical to infer that if these two factors are the same for two members of the patrol that the legislature intended them to receive the same salary. Conversely, if two members have the same rank, the one with a longer period of service should receive the greater salary.

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The law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression. State ex rel. Stern Bros. and Co. v. Stilley, 337 S.W.2d 934 (Mo. 1960). We therefore conclude that when a patrol member's annual salary is increased, it is proper for the highway patrol to recompute all previous longevity increases on the basis of the increase in salary.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General