

COMPENSATION: To the extent that the salaries of as-
COUNTY OFFICERS: sessors of second, third, or fourth
COUNTY ASSESSORS: class counties would be increased by
the provisions of Section 53.071.3,
Senate Bill No. 373, 77th General Assembly, Second Regular Ses-
sion, because of the use of the present tax year's assessed val-
uation instead of the preceding year's assessed valuation, such
section does not apply to such assessors during their present
terms of office.

OPINION NO. 327

December 18, 1974

Honorable James Eiffert
Prosecuting Attorney
Christian County
P. O. Box 395
Ozark, Missouri 65721



Dear Mr. Eiffert:

This is in response to the following question posed by you:

"When the assessed valuation of a County increases from one salary level to another as defined in Section 53.071, R.S.Mo., Supplement, 1974, Act 78, Senate Bill No. 373, when does the increased salary for the County Assessor become effective?"

The statute you refer to is Senate Bill No. 373, Second Regular Session, 77th General Assembly. Section 53.071.3 of that act provides:

"For the purpose of computing an assessor's compensation, the term 'assessed valuation' means the total assessed valuation of his county as computed by the state tax commission for the tax year in which the September first, which begins the year of incumbancy [sic] for which the annual compensation is computed falls. The state tax commission shall provide the department of revenue with each such computation of valuation made by them."

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Section 53.071.1, Senate Bill No. 373, provides for the level of compensation of county assessors to be based on the assessed valuation of the particular county.

We understand your opinion request to deal with the following problem. The term of office of a county assessor begins on September 1 next following his or her election, Section 53.010, RSMo 1969. The level of the assessor's compensation is based on the assessed valuation of the county, Section 53.071.1. Where the assessed valuation of a county increases from one level set out in Section 53.071.1 to a higher level, the assessor is entitled to increased compensation. Your opinion request asks when the assessor, under these circumstances, becomes entitled to the increased compensation.

The basic rule of statutory construction is to seek the intent of the lawmakers and, if possible, to effectuate that intention. The person construing the statute should ascertain the legislative intent from the words used if possible and should ascribe to the language used its plain and rational meaning. State ex rel. Clay Equipment Corporation v. Jensen, 363 S.W.2d 666 (Mo.Banc 1963).

We note that Section 53.071.1 provides that ". . . each county assessor, except in counties of the first class, shall receive an annual salary for his services . . ." (emphasis added). In State ex rel. Harvey v. Linville, 300 S.W. 1066 (Mo. 1927), the court interpreted the words "annual salary," as used in a statute setting the compensation for superintendents of schools, to mean the salary for each year of the incumbency. This office concluded in Opinion No. 85, Stewart, 1961, attached hereto for your reference, that "annual" salary is the salary for each year of an officer's incumbency. Therefore, as Section 53.071.1 provides for an annual salary and as Section 53.071.3, quoted above, uses the clause ". . . the year of incumbency [sic] for which the annual compensation is computed . . .," the compensation for assessors of second, third, and fourth class counties is clearly to be determined on an annual (twelve-month) basis, rather than for the whole four-year term of office.

Section 53.010, RSMo 1969, provides that the county assessors are to take their office on September 1 next following their election. We also note that Section 53.071.3 refers to the fact that a year of incumbency for an assessor begins on September 1. In State ex rel. Harvey v. Linville, supra at 1067, the court said:

". . . we conclude further that 'annual,' as applied to salaries, means not the calendar years, but the years of the incumbent's term,

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which in the case of relator begins on the 1st day of April each year."

Therefore, we conclude that the annual level of compensation of an assessor is to be paid for the period of September 1 to August 31 of the following year.

Section 53.071.3, quoted above, clearly provides that "assessed valuation," which is the basis for determination of the annual level of compensation of assessors, means total assessed valuation of the county as computed by the State Tax Commission. This section also provides that such total assessed valuation is to be computed

". . . for the tax year in which the September first, which begins the year of incumbency [sic] for which the annual compensation is computed falls. . . ."

We interpret Section 53.071.3 to mean that an assessor's salary for any particular twelve-month period (beginning September 1) is to be based on his county's total assessed valuation for the tax year which encompasses the first day of September beginning the new year of incumbency. For example, the level of compensation for the year of incumbency beginning September 1, 1974, and ending August 31, 1975, is to be determined from the total assessed valuation for tax year 1974. Such is the plain and rational meaning of the words used in Section 53.071.3.

Section 137.080, RSMo 1969, provides:

"Real estate and tangible personal property shall be assessed annually at the assessment which commences on the first day of January."

Therefore, a tax year is on a calendar year basis. As Section 53.071.3 provides for the annual compensation of the assessor to be determined on the basis of the county's assessed valuation for the tax year in which the beginning of the assessor's twelve-month pay period falls (i.e., September 1), we hold that Section 53.071.3 entitles an assessor to an increased level of compensation beginning on September 1 of any year in which the total assessed valuation for the county for that calendar (tax) year, assessed as of January 1, reaches a higher plateau as set out in Section 53.071.1.

We recognize that a particular county might have some difficulty in determining, by September 1, whether the assessed valuation for that year has increased so as to reach a new plateau set

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out in Section 53.071.1. The difficulty arises because the State Tax Commission may not, in a particular year, certify an increase in the assessed valuation of a county until after September 1. However, this fact would in no way affect the obligation of the county and state to pay the level of salary to which the assessor is entitled under the statutes. This is because the assessed valuation is as of January 1, even though assessment may not be completed until a later date. Long v. City of Independence, 229 S.W.2d 686 (Mo. 1950).

The rule is that the statutes create the right of a public official to compensation for his services and such official is entitled to receive or recover the compensation to which he is entitled. Bates v. City of St. Louis, 54 S.W. 439 (Mo. 1899); Davenport v. Teeters, 315 S.W.2d 641 (Spr.Ct.App. 1958). The failure of the county court to budget the full amount of salary due an official does not bar the right of such official to be paid the balance of the salary due him. Gill v. Buchanan County, 142 S.W.2d 665 (Mo. 1940). With these rules in mind, it is the opinion of this office that where the assessed valuation of a county increases so as to entitle a county assessor to increased compensation, such assessor is entitled to the increased compensation from September 1 of that taxable year despite the possibility that the increase in the assessed valuation may not be finally known to the county until after September 1. We believe that the language of Section 53.071.3 clearly intends such a result.

In your opinion request you also make reference to Article VII, §13, Missouri Constitution. This section provides:

"The compensation of state, county and municipal officers shall not be increased during the term of office; . . ."

The question is whether an increase in the annual compensation of a county assessor during his term of office, as provided in Section 53.071.1, by reason of an increase in the assessed valuation of the county violates this constitutional provision.

The Missouri Supreme Court has previously held that the constitutional prohibition against increasing the compensation of a public officer during his term of office is not violated where the increase is due to a change in some classification provided by a statute in effect when the official took office. In State ex rel. Harvey v. Linville, supra, the court had before it a statute which set the county school superintendent's annual salary at a level to be determined by the county population as determined by the vote at the last general election. The court held that this salary increase, due to an increase in population,

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did not violate the constitutional prohibition. The court reasoned that:

"The increase of salary which a statute permits after an election showing an increase of population is not in violation of the Constitution, in that the salary is increased during the term for which the officer was elected, because the law in force at the time of his election fixes his salary, to be ascertained at periods as changed by the increase in population. [Citation omitted] The salary of an officer, dependent upon the population as ascertained from time to time, would be determined by the law in force at the time of his election, . . ." Id. at 1067.

See also, to the same effect, State ex rel. Moss v. Hamilton, 260 S.W. 466 (Mo.Banc 1924), cited in the Linville opinion.

While we have found no cases dealing with the applicability of the constitutional prohibition to a statute setting salary levels based on assessed valuation, we believe that the holdings of State ex rel. Harvey v. Linville and State ex rel. Moss v. Hamilton, supra, control the instant question. That is, an increase in the annual salary of a county assessor of a second, third, or fourth class county pursuant to Section 53.071.1, which occurs solely by reason of an increase in the assessed valuation of the county, does not violate the prohibition of Article VII, §13, Missouri Constitution, as to an assessor whose term of office begins after the effective date of the statute.

We note, however, that county assessors are elected at the general election for a four-year term and that the last such election was in November, 1972. Section 53.010, RSMo 1969. Therefore, the present county assessors in second, third, and fourth class counties began their terms of office on September 1, 1973. Section 53.010. As Senate Bill No. 373, 77th General Assembly, took effect August 13, 1974, the question arises whether Article VII, §13 would prohibit an incumbent county assessor from realizing an increase in his annual salary under Section 53.071.1, due to an increase in the assessed valuation of the county. Section 53.071.1, Senate Bill No. 373, provides the same levels of compensation for assessors of second, third, and fourth class counties as did its predecessor statute, Section 53.071.1, RSMo Supp. 1973, effective September 1, 1970. Therefore, the level of compensation provided in present Section 53.071.1 does not amount to an increase in compensation for assessors and does not violate Article VII, §13.

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However, we also note that Section 53.071.3, Senate Bill No. 373, provides for a change in the method of figuring the assessed valuation of a county for purposes of Section 53.071.1, from the method provided in the former statute. Assessed valuation for purposes of the present statute is the total assessed valuation for the tax year in which the September 1 beginning a particular year of incumbency falls, while the former statute provided that assessed valuation was the total assessed valuation "for the tax year immediately preceding the tax year for which the salary is paid." Section 53.071.3, RSMo Supp. 1973.

Thus, the question becomes whether a change in the method of determining the level of compensation, enacted during the term of the incumbent officeholders, amounts to an increase in compensation prohibited by Article VII, §13. Certainly, the change in the method of determining compensation found in Section 53.071.3, Senate Bill No. 373, does not automatically work to increase the compensation of assessors. But it may do so by the fact that an increase in assessed valuation for a particular county, so as to raise the level of compensation, will increase the salary of the assessor one year sooner than under the previous section.

The basic rule in interpreting statutes in light of constitutional provisions such as Article VII, §13 was stated by the Wyoming Supreme Court thus:

". . . 'Constitutional or statutory provisions prohibiting a change in the compensation of public officers after their election or appointment or during their terms of office are given effect in accordance with their intent, and may not be circumvented by indirect changes.'" Blackburn v. Board of County Commissioners of Park County, 226 P.2d 784, 788 (Wyo. 1951).

Moreover, it is said in interpreting statutes such as Section 53.071.3:

". . . There is no distinction between a law enacted during an officer's term which, by its express terms, proposes to increase or diminish his compensation during such term and one which furnishes a standard by which such result may be obtained. They equally violate the constitutional provision . . ."
63 Am.Jur.2d Public Officers and Employees §373 p. 855 (1972).

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In State ex rel. Gilbert v. Board of Com'rs of Sierra County, 222 P. 654 (N.M. 1924), the court had before it a statutory change similar to that found in Section 53.071.3. The old statute provided for determining the salaries of county officers based on assessed valuation, the statute directing that assessed valuation was to be redetermined every four years. The new statute provided for the same levels of compensation, but directed that assessed valuation be redetermined every two years. The New Mexico court held that the statutory change, as applied to incumbents, violated New Mexico's constitutional prohibition against increasing or decreasing the compensation of public officers during their terms.

In State ex rel. Harvey v. Linville, *supra*, the court considered a statute which changed the method of determining the salaries of superintendents of schools. The level of compensation was determined on the basis of county population, the old statute figuring population on the vote at the last general election, and the new statute using the vote at the last presidential election. The Missouri Supreme Court held that the statutory change was inapplicable to the incumbent officeholders by virtue of the predecessor to Article VII, §13. While the statute involved in the Linville case also provided for increased levels of compensation, the court apparently concluded that both the method of calculating population and the increased compensation schedule violated the constitutional provision as to incumbents.

The reasoning behind the Linville and Sierra County cases was followed by this office in Opinion No. 399, Brandom, 1969, attached hereto for your reference. That opinion dealt with a statute which changed the methods of compensating certain officers. We concluded that if the statute did in fact provide an increase in compensation for any particular officers, the statute would not become effective to the extent that compensation would be increased until the end of the present term of such officers. Our conclusion with respect to Section 53.071.3, Senate Bill No. 373, is the same. That is, to the extent that Section 53.071.3 would work to increase the salary of an assessor during his present term by reason of using the present tax year assessed valuation instead of the preceding tax year assessed valuation, such section will not become effective as to that assessor until the end of his present term. This result is required by the conclusion, supported by the Linville and Sierra County cases, that any increase in compensation of a public officer during his term of office, whether by expressed provision or indirect affect of the statute violates Article VII, §13, Missouri Constitution.

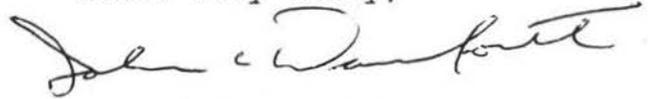
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CONCLUSION

We conclude that to the extent that the salaries of assessors of second, third, or fourth class counties would be increased by the provisions of Section 53.071.3, Senate Bill No. 373, 77th General Assembly, Second Regular Session, because of the use of the present tax year's assessed valuation instead of the preceding year's assessed valuation, such section does not apply to such assessors during their present terms of office.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Dan Summers.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 85
1-26-61, Stewart

Op. No. 399
10-9-69, Brandom