

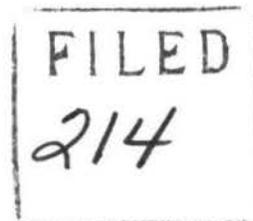
ASSESSORS:
ASSESSMENTS:
COMPENSATION:
COUNTY JUDGES:

1. The rate of compensation of county assessors in third and fourth class counties and second class counties except those having an assessed valuation in excess of three hundred million dollars as of January 1, 1974, for additional duties required by Section 53.073 (Senate Bill No. 373, 77th General Assembly, Second Regular Session), shall be based upon their county's total assessed valuation for the tax year which encompasses the first day of September beginning the annual salary period. 2. The rate of compensation of county court judges in second, third, and fourth class counties for additional duties authorized in Senate Committee Substitute for Senate Bill No. 95, 78th General Assembly, First Regular Session, shall be based upon the assessed valuation of the county for the tax year immediately preceding the year in which the compensation is due.

OPINION NO. 214

November 13, 1975

Honorable George W. Lehr
State Auditor
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Lehr:

This opinion is in response to your request as follows:

"What year of assessment valuation should be utilized in calculating the following:

1. The level of compensation for county assessors for the extra duties authorized by Sections 53.073 and 53.074, RSMo, as amended by Senate Bill No. 373, Seventy-Seventh General Assembly, Second Regular Session;

2. The level of compensation for county judges for the extra duties authorized by Senate Bill No. 95, Seventy-Eighth General Assembly, First Regular Session."

In response to your first question, Sections 53.073 and 53.074, RSMo, as amended in 1974, state:

"Each county assessor, except in counties of the first class and counties of the

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second class having an assessed valuation in excess of three hundred million dollars as of January 1, 1974, shall on or before October first of each year furnish to the county collector of the revenue of his county a list of all real property transfers occurring after January first of that year and before September first of that year. The list shall contain a description of the property transferred and the name of each grantor and grantee and their addresses if known." (Section 53.073)

"As compensation for the extra duties imposed by section 53.073, each assessor shall receive, in addition to all other compensation provided by law, a sum to be paid out of the county treasury to be computed as follows:

(1) In all counties with an assessed valuation of less than thirty million dollars, one thousand dollars;

(2) In all counties with an assessed valuation of thirty million dollars but less than seventy million dollars, one thousand five hundred dollars;

(3) In all counties with an assessed valuation of seventy million dollars but less than one hundred million dollars, two thousand dollars;

(4) In all counties with an assessed valuation of one hundred million dollars but less than one hundred fifty million dollars, two thousand five hundred dollars;

(5) In all counties with an assessed valuation of one hundred fifty million dollars but less than two hundred million dollars, three thousand dollars;

(6) In all counties with an assessed valuation of two hundred million dollars but less than two hundred fifty million dollars, three thousand five hundred dollars;

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(7) In all counties with an assessed valuation of two hundred fifty million dollars but less than three hundred million dollars, four thousand dollars;

(8) In all counties with an assessed valuation of three hundred million dollars but less than three hundred fifty million dollars, four thousand five hundred dollars;

(9) In all counties with an assessed valuation of three hundred fifty million dollars or more, five thousand dollars."
(Section 53.074)

In addition, Section 53.071, RSMo, was amended as part of the same legislative act (Senate Bill No. 373, 77th General Assembly, Second Regular Session). Section 53.071 established salary levels for county assessors in second, third, and fourth class counties based upon the assessed valuation of the particular county. Section 53.071.3 states:

"3. 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 incumbency 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."

In Opinion No. 327, Eiffert, December 18, 1974 (copy enclosed), this office concluded 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. Furthermore, the assessor's compensation is to be computed based upon the assessed valuation of the county for the tax (calendar) year in which a particular annual salary period (September 1) begins.

You have now asked which year of assessed valuation is to be used as the basis for computing the compensation for the additional duties contained in Sections 53.073 and 53.074.

In Opinion No. 17, Paden, January 25, 1968 (copy enclosed), this office considered a similar question concerning compensation to prosecuting attorneys. In that case, an amendment to Section 56.291,

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RSMo, was silent concerning which tax year to use as the basis for computing the compensation for additional duties for prosecuting attorneys. The opinion concluded that the increased compensation should begin January 1 after the year in which the State Tax Commission had raised the assessment level. The reasoning was that the assessment process did not begin until May 1 of each year and may not conclude until December 31. Therefore, the intent of the legislature was clear that the increased compensation should begin the next year.

However, in Opinion No. 327, 1974, mentioned previously, this office considered Section 53.071, quoted previously, which does contain an express reference to which year of assessed valuation should apply. The opinion stated:

"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 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

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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."

As previously noted, Senate Bill No. 373, 77th General Assembly, Second Regular Session, contained an amendment to Section 53.071 and enacted Sections 53.073 and 53.074. One of the amendments to Section 53.071 was to change the tax year used to compute compensation from "the tax year immediately preceding the tax year for which the salary is paid" (Laws 1969, p. 79) to "the tax year in which the September first, which begins the year of incumbency for which the annual compensation is computed falls."

One principle of statutory interpretation is that:

". . . '[t]he endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, or to discover how the policy of the legislature with respect to the subject matter has been changed or modified from time to time. . . .'"
(State ex rel. Jackson County v. Spradling, 522 S.W.2d 788, 791 (Mo.Banc 1975); 82 C.J.S. Statutes § 366, pp. 808-810)

In applying this principle to the question at hand, it is our view that since the General Assembly, in one act, changed the tax year used to calculate basic compensation of county assessors and also established additional duties to be compensated based upon assessed valuation of the particular county, it logically follows that the General Assembly intended for the additional duties to be compensated upon the same basis as the general compensation. As a practical matter, it is unlikely that the General Assembly intended that two separate tax years be utilized to calculate different portions of the compensation to county assessors. Therefore, it is our view that the considerations discussed in Opinion No. 17, 1968, yield to the intent expressed by the General Assembly in Senate Bill No. 373 which recognizes the unique term of annual compensation of county assessors which begins on September 1 of each year.

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While it is our view generally that the General Assembly intended to use the same tax year (the current year within which an annual salary period begins on September 1) for computing general compensation and additional duties for particular county assessors, we repeat our view expressed in Opinion No. 327, 1974, that any affected county assessor, who would otherwise receive an increase in his basic compensation by utilizing the new tax year method, is prohibited from receiving the increase during his present term of office, pursuant to Article VII, Section 13, Missouri Constitution. This restriction does not apply to the compensation for the additional duties. See Opinion No. 313, Briscoe, October 23, 1974 (copy enclosed).

Your second question concerns recent legislation (Senate Committee Substitute for Senate Bill No. 95, 78th General Assembly, First Regular Session) in which the General Assembly establish additional duties for county court judges in second, third, and fourth class counties.

Senate Bill No. 95 states:

"Section 1. For the benefit of the executive branch and members and staff of the general assembly, in determining local needs in appropriation of funds of the state, the judges of the county court in all counties of the second, third and fourth class shall file with the office of administration, committee on state fiscal affairs, and the state auditor copies of summarized reports of all funds received from any agency of the United States government. Further, judges of the county court, collectively or by designation of the presiding judge, shall represent the county on the following regional councils which may encompass their county; manpower planning; aging; health planning; law enforcement assistance; community action; countywide sewer districts; solid waste management; county planning and zoning; university of Missouri extension; future boards, commissions and councils relating to health, education or welfare of the citizens as established by executive or legislative action of the government of the United States or of the state; and such other councils and organizations relating to operations of counties as from time to time may be created.

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"Section 2. 1. As compensation for the extra duties imposed by section 1 of this act, each judge of the county court in counties of the second class shall receive, in addition to all other compensation provided by law, an annual sum to be paid out of the county treasury based upon the assessed valuation of the county as follows:

Assessed Valuation of the County Amount of Salary

Less than \$150,000,000	\$1,200.00
More than \$150,000,000	\$1,500.00

"2. As compensation for the extra duties imposed by section 1 of this act, each judge of the county court in counties of the third and fourth class shall receive, in addition to all other compensation provided by law, an annual sum to be paid out of the county treasury based upon the assessed valuation of the county as follows:

Assessed Valuation of the County Amount of Salary

Less than \$25,000,000	\$1,000.00
More than \$25,000,000	\$1,200.00"

The act is silent concerning which year of assessed valuation to use as a basis for calculating the level of compensation.

We find no other expression of intent of the General Assembly concerning which tax year to use to compute the level of compensation for county court judges in second, third, and fourth class counties. Therefore, it is our view that our analysis in Opinion No. 17, 1968, is applicable here. As such, it is our view that when the assessed valuation of a county increases sufficiently to place it in a higher compensation bracket, as established in Senate Bill No. 95, the county court judges are entitled to the increased compensation as of the following January 1.

CONCLUSION

It is the opinion of this office that:

1. The rate of compensation of county assessors in third and fourth class counties and second class counties except those having an assessed valuation in excess of three hundred million

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dollars as of January 1, 1974, for additional duties required by Section 53.073 (Senate Bill No. 373, 77th General Assembly, Second Regular Session), shall be based upon their county's total assessed valuation for the tax year which encompasses the first day of September beginning the annual salary period.

2. The rate of compensation of county court judges in second, third, and fourth class counties for additional duties authorized in Senate Committee Substitute for Senate Bill No. 95, 78th General Assembly, First Regular Session, shall be based upon the assessed valuation of the county for the tax year immediately preceding the year in which the compensation is due.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Andrew Rothschild.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 327
12-18-74, Eiffert

Op. No. 17
1-25-68, Paden

Op. No. 313
10-23-74, Briscoe