SENATE BILL NO. 101: If passed and approved will not affect present compensation of any officers except circuit clerks and prosecuting attorneys.

June 14, 1941

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Honorable Bernard L. Glover
Missouri State Senator
State Capitol Building
Jefferson City, Missouri

Dear Senator Glover:

This will acknowledge receipt of your letter of June 10, 1941, in which you ask for an opinion from this Department, as follows:

"There has been perfected and is now listed on the Senate calendar for final passage Senate Bill No. 101, which proposes to increase the salary of the office of the prosecuting attorney of Jackson County from $5,000 to $6,000. It is contemplated by this bill, copy attached, to re-enact Section 13465, R. S. 1939, to effect the proposed change. This same section provides the salaries of other Jackson County officers and also the salaries of certain officers of St. Louis County.

"In addition to the salaries provided in Section 13465, certain fees and other compensation are provided in other sections; for instance, the prosecuting attorney of Jackson county is a member of the Parole Board and receives a salary of $1,500, Sections 9168 and 9172, R. S. 1939.

"The Clerk of the Jackson County County Court receives a salary $3,000, per Section 13465, and in addition receives other

compensation; for instance, notary commissions as per Section 13474.

"The Recorder of Deeds receives a salary of $3,000, as per Section 13465, and in addition thereto is allowed certain fees and compensation as provided in Sections 3483 and 3488, R. S. 1939.

"The same situation may exist as to other county officers named in Section 13465, however, the above references to particular officers will serve to illustrate the point about which I desire to have your advice as to the effect of enactment of Senate Bill No. 101.

"It may be well to direct attention to Section 13473 which appears to place some limitation on the receipt of fees and compensation to county officers named in Section 13465. It is not likely that this Section 13465 could be interpreted as restricting the prosecuting attorney of Jackson County from receiving compensation allowed under Section 9172, as hereinbefore mentioned, for serving as a member of the Parole Board?

"It has been intimated that if Senate Bill No. 101 is enacted into law the question might be raised as to continuation of allowances of fees and additional compensation, as provided in other sections, to salaries prescribed in Section 13465. The only purpose of Senate Bill No. 101 is to increase the salary of the Jackson County Prosecutor from $5,000 to $6,000. If enacted, it would not change the salary of the present prosecutor. The next prosecutor elected after passage of this bill would receive $6,000 in salary; plus additional compensation of $1,500 allowed for duties as a member

of the Parole Board.

"I will appreciate your advice and ruling on the effect of Senate Bill No. 101 in its present form.

"You may observe this bill omits the Clerk of the Circuit Court. The reason for such omission is: In House Bill No. 379 it is proposed that the salary of the Circuit Clerk shall be $6,750 instead of $3,000 as now provided in Section 13465. I have not endeavored to ascertain what, if any, additional compensation, or fees, is allowed to the Clerk of the Circuit Court but if the suggested elimination from Section 13465 and the enactment of House Bill No. 379 would obstruct accomplishing what is intended in it, I would be pleased for you to so advise and to suggest amendments or corrections thereof.

"I might further state that it has been going over in my mind the advisability of having an amendment offered in the House to Senate Bill No. 101, providing, in substance, the following:

"line 22, page 2, continuing with new sentence -

> 'And further provided, that nothing herein shall affect any fees or other compensation authorized by law.'

"As to such an amendment, it would appear that Section 13463 might be affected."

The rule of statutory interpretation and application which guides us in the solution of your question is very aptly stated by the Supreme Court of Missouri in the case of Investment Co. v. Curry, 264 Mo. 483, at l. c. 495-6, as follows:

> "At the revising session of 1889 the foregoing section was amended by a revised bill and all those provisions quoted in italics were eliminated, leaving the section in the form which it has ever since appeared in our statutes. (Sec. 4558, R. S. 1889; Sec. 2979, R. S. 1899; and Sec. 391, R. S. 1909).
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> "There seems to be no doubt that it was the legislative intent to repeal those provisions of the original act suspending its operation in favor of parties under legal disabilities, and possibly as to widows occupying the mansion houses of their husbands.
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> "So much of the original act as appears in the revised bill was taken from the Act of 1887. This is manifest by a reference in the revised bill itself to the Laws of 1887, p. 177, as the place from which this section as amended was derived.
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> "The usual rule is that when part of a former act is repeated in an amendatory statute, the provisions thus repeated are considered as a continuation of the former law, and not as a new enactment; while those parts of the original act which are omitted from the amendment are treated as repealed. This rule is announced by Lewis-Sutherland in the second edition of his work on Statutory Construction, vol. 1, pp.442-3, as follows:

> "'The amendment operates to repeal all of the section amended not embraced in the amended form. The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act.'
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> "See also 36 Cyc. 1082. This rule seems to have met with statutory recognition in this State. (Sec. 6606, R. S. 1889; Sec. 8086, R. S. 1909. See also State ex rel. Craig v. Woodson, 128 Mo. 497, l. c. 512.)"

A comparison of Senate Bill No. 101 of the Sixty-first General Assembly with Section 13465, Article 4, Chapter 99 of the Revised Statutes of Missouri, 1939, reveals that the provision for the salary of the circuit clerk in Section 13465, supra, is omitted from Senate Bill No. 101; that the amount of salary prescribed for the prosecuting attorney by the terms of Senate Bill No. 101 is $1,000 greater than that prescribed by Section 13465, supra, and that Senate Bill No. 101 does not in any way change the other provisions of Section 13465, R. S. Missouri, 1939.

Applying the above stated rule, it is quite clear that the passage and approval of Senate Bill No. 101 would repeal the salary provision for the clerk of the circuit court, increase the salary of the Prosecuting Attorney $1,000 per annum, and in no way affect the provisions pertaining to other officers, merely continuing the present provisions.

CONCLUSION.

It is the belief of the writer that the passage and approval of Senate Bill No. 101 of the Sixtyfirst General Assembly would make the changes above noted with regard to the Prosecuting Attorney and the Circuit Clerk, but would have no effect upon the compensation of the other officers mentioned therein, continuing in esixtence the law as it now applies to the other officers mentioned.

Trusting this fully answers your question, it is

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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