

OFFICERS: Compensation of officers cannot be increased during their term of office.

August 14, 1943



Honorable W. A. Holloway
Chief Clerk
State Auditor's Office
Jefferson City, Missouri

Dear Mr. Holloway:

The Attorney-General wishes to acknowledge receipt of your letter of August 13, 1943, in which you request an opinion of this department. Your request, omitting caption and signature, is as follows:

"House Bill No. 542 has been passed by the General Assembly and signed by the Governor on August 4, 1943.

"This bill amends Section 14030, R. S. Missouri, 1939, by changing the compensation of the Assessor from four cents to ten cents for each individual statistical listing of land acreage filed with the Commissioner of Agriculture. The ten cents to be paid as the four cents has been previously paid by the State and County.

"Bearing in mind that Township Assessors are elected in the Spring for terms of two years each, and that County Assessors are elected in the General Election for terms of four years each; the point has been raised with this office and we therefore desire your opinion as to when the Assessors will be entitled to receive their additional compensation provided for in House Bill 542."

During the session of the 62nd General Assembly, held in Jefferson City, beginning in January, 1943, there was a

Concurrent Senate Resolution presented (Resolution No. 2) which recommended and resolved that an amendment to the Constitution be made declaring that all laws passed by the General Assembly should become effective ninety days after the signing of such laws by the Governor of this State. This Resolution was presented in the form of an Amendment to the Constitution on April 6, 1943, to the electorate, and the same passed. Said Amendment provides as follows:

"Amendment repealing Section 36, Article IV, Missouri Constitution, and enacting new section providing effective date of laws of General Assembly, except appropriation acts and emergency acts.

"JOINT AND CONCURRENT RESOLUTION submitting to the qualified voters of the state of Missouri an amendment repealing Section 36 of Article IV of the Constitution of Missouri and enacting in lieu thereof a new section relating to the same subject establishing the effective date of laws, to be known as Section 36 of Article IV.

"Be it resolved by the Senate, the House of Representatives concurring therein:

"That at a special election to be called by the Governor for that purpose, or at the general election, to be held in this state on the first Tuesday after the first Monday of November in the year 1944, there shall be submitted to the qualified voters of this state for adoption or rejection a proposition to repeal Section 36 of Article IV of the Constitution of Missouri relating to the effective date of laws, and to enact in lieu thereof a new section relating to the same subject matter to be known as Section 36 of Article IV and to read as follows:

Section 36. No law passed by the General Assembly, except appropriation acts, shall take effect or go into force until ninety days after enactment and approval thereof as otherwise provided by this Article, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal."

It will be seen from a study of the above constitutional amendment that a law passed by the General Assembly, except appropriation acts, cannot take effect until ninety days after its enactment and approval by the Governor. This appears to be what might be termed a "negative provision," and does not state when an act shall go into effect.

In view of that fact I also wish to cite you to Section 659, R. S. Mo., 1939, which in part provides the following:

"A law passed by the general assembly shall take effect ninety days after the adjournment of the session at which it is enacted, subject to the following exceptions:

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This statute provides that a bill shall go into effect ninety days after the adjournment of the Legislature. This is a positive provision and consequently, since it was not repealed by the Constitution nor in conflict with the constitutional provision cited above, it is our opinion that a bill such as House Bill 542 which does not include an emergency clause and which does not provide that it shall go into effect ninety days after its passage and approval, will take effect under the provisions of Section 659, R. S. Mo. 1939, aforesaid, ninety days after the adjournment of the session of the Legislature during which it has been passed.

I might further say that another reason for this view is that at the last General Assembly there was introduced in the House of Representatives, House Bill No. 652, which was intended to remedy this situation and in repealing Section 659, aforesaid, was to provide that a law passed by the General Assembly should take effect ninety days after its passage and approval by the Governor. However, this bill failed to pass.

In view of the foregoing it is our opinion that House Bill No. 542 will take effect ninety days from the adjournment of the session of the Sixty-second General Assembly, which at this time we are unable to compute.

Your question deals primarily, however, with the effective date of House Bill No. 542 with regard to township assessors and county assessors who are at the present time holding office and whether or not these officers can receive an increase in compensation under this bill or whether, as far as their offices are concerned, this bill will not effect them until the next county and township assessors are elected.

The term of office and the manner in which the township assessors are elected are set out in Sections 13944 and 13945, R. S. Mo. 1939. These sections provide as follows:

"(13944) The citizens of the several townships in all counties having adopted the township organization law of this state, who are qualified by the Constitution and laws of this state to vote at general elections, shall assemble biennially on the last Tuesday in March at their usual place of voting, or at such place in their respective townships as they may have previously agreed upon, for the purpose of electing township officers and such other officers and transacting such other business as may be necessary."

"(13945) There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, and one township clerk, who shall

be ex officio township assessor, one constable, two members of the board, and two justices of the peace: Provided, the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices; also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law."

As can be seen from a study of these two sections of the statutes, the township assessor shall be elected every two years on the last Tuesday in March, at which time all of the officers of the township are selected.

As far as county assessors are concerned, we find the regulation as to their election in Section 10943, R. S. Mo. 1939, which prescribes the following:

"At the general election in the year one thousand nine hundred and every four years thereafter, there shall be elected by the qualified voters of the several counties in this state a county assessor, who shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office: Provided, that this section shall not apply to the city of St. Louis."

As can be seen from a study of the above section, we find that the county assessors are elected each four years, during the general election.

We further wish to call attention to the fact that Article XIV, Section 8, of the Constitution of Missouri, provides that no officer shall have his salary or compensation increased during his term of office. This section of the Constitution provides as follows:

"The compensation or fees of no State, county or municipal officer shall be

increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

The only manner in which an officer may receive additional compensation to the compensation prescribed by statute during his term of office, is that he be given additional duties by the Legislature and for such additional duties he shall receive and may receive an additional amount to that received at the beginning of his term. See *Dennenny v. Silvey*, 302 Mo. 665, 259 S. W. 422. Page 2, on line 25 of House Bill 542, we find the following:

"The assessor shall receive for such additional assessment service as required in this section an additional fee of ten cents for each individual statistical listing of land acreage and other accompanying agricultural statistics filed by him with the commissioner of agriculture, which additional fee shall be paid out of the general revenue fund of the state * * *."

By reading the above provision it might be thought that in view of the fact there is mentioned in this act an additional assessment service, that the county assessor and the township assessor might be permitted to receive the additional compensation provided by this bill in view of the fact that there is an additional service which they are required to perform. However, by a study of Section 14030, R. S. Mo. 1939, we find that the very same wording was in that section of the statute and if there is any additional service to be had that such duty was provided for by the statute of 1939 and not by House Bill 542. Consequently, as far as the officers involved are concerned, they will be required to perform the same duties as they were required to perform at the time of their election, the only difference being that instead of receiving four cents for each individual statistical listing that they shall receive ten cents. In view of the fact that this is in conflict with Article XIV, Section 8, of the Constitution of Missouri, it is the opinion

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of this Department that the officers now holding these particular offices in the State of Missouri will not be entitled to receive the additional compensation provided by House Bill No. 542 during the term of the office which they now hold.

Conclusion

Therefore, it is the opinion of this Department that the present incumbents of the offices of township assessor and county assessor in the State of Missouri shall not be entitled to the additional compensation provided by House Bill No. 542, in view of the fact that they have no right to any additional compensation during their present term of office and that such additional compensation cannot be forthcoming until the next term of these offices.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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