SHERIFFS : House Committee Substitute for House Bill No. 872 is effective as of July 1, 1946.

CONSTITUTIONAL LAW: House Committee Substitute for House Bill No. 872 is not in conflict with Sec. 13 of Art. VII of the Constitution of 1945. Payment of salaries of sheriffs of counties of the fourth class would not be in violation of county Budget Law.

Mimes

July 8, 1946

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Honorable John H. Keith
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Sir:

This department is in receipt of your recent letter requesting an opinion, based on the following state of facts:

> "Please let me have your opinion as to whether or not House Committee Substitute for House Bill No. 872 which has been passed by the legislature and signed by the Governor, and which provides salaries for sheriffs and their deputies in counties of the fourth class, will apply to the sheriff who was elected prior to the adoption of the present Constitution.
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> "This act provides that it shall become effective on July 1, 1945. This act will greatly increase the compensation of sheriffs during their term of office, and is apparently in conflict with Sec. 13, Art. 7, Constitution 1945, which provides the compensation of officers shall not be increased during the term of office, etc.
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> "In as much as the county could not issue warrants for salaries to pay officers under this act without violating the Budget Law, then if this law becomes operative on July 1, 1946, salaries could not be paid for the remainder of the year unless at the end

> of the year there would be a surplus, if I correctly understand the law."

Your letter presents three distinct questions, and they have been answered in the order in which you have them enumerated.

As to question No. 1, your attention is called to Section 3 of the Schedule of the Constitution of 1945, which provides as follows:

> "The terms of all persons holding public office to which they have been elected or appointed at the time this Constitution shall take effect shall not be vacated or otherwise affected thereby."

The sheriff, therefore, would hold his office for the term to which he was elected, which of course would be after July 1, 1946.

Section 2 of the Schedule provides:

> "All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, shall remain in full force and effect until July 1, 1946."

Since Section 13413, R.S. Mo. 1939, which provides the fees of sheriffs in criminal cases, is inconsistent with Section 13, Article VI of the Constitution of 1945, which provides for a salary in criminal matters, it was, as of July 1, 1946, repealed and inoperative. House Committee Substitute for House Bill No. 872 was passed and became effective as of July 1, 1946, for the very purpose of carrying out the mandate of Section 13, Article VII of the Constitution, and did place the sheriff, then in office, on a salary basis in criminal matters.

Section 13, Article VI of the 1945 Constitution, could also be said to be effective as of July 1, 1946, the date set out in Section 2 of the Schedule, supra, because it is self-

executing. This principle finds support and authority in 11 Am. Jur., Section 73, pages 690 and 691, and cases cited, which in part is as follows:

> "It has been said that in the determination of whether a provision is self-executing, the question in every case is whether the language of a constitutional provision is addressed to the courts or to the legislature. * * * * * * * * * *
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> "Minor details may be left for the legislature without impairing the self-executing nature of constitutional provisions. Thus, it has been held that * * * * * * a constitutional provision that particular officials shall be paid by salary instead of by fees is self-executing, although the determination of the amount of the salary is left to the legislature."

It follows, therefore, that the sheriff's term of office is not affected by the new Constitution and he remains in office, and that Section 13, Article VI of the new Constitution became effective on July 1, 1946, is self-executing and would apply to the sheriff in office at that time, even if House Committee Substitute for House Bill No. 872 had not been passed by the General Assembly.

Considering the second question, the act finds constitutional authority under Section 13, Article VI of the 1945 Constitution, which is as follows:

> "All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons, accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the

> same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

It follows that if this act is in conflict with Section 13, Article VII of the Constitution of 1945, and consistent with Section 13, Article VI thereof, then the two sections of the Constitution are in apparent conflict and must be construed. The rule of construction as to this kind of a situation may be found in 11 Am. Jur., Section 53, pages 661, 662 and 663, which reads in part as follows:

> "In construing a constitutional provision, it is the duty of the court to have recourse to the whole instrument, if necessary, to ascertain the true intent and meaning of any particular provision, and if there is an apparent repugnancy between different provisions, the court should harmonize them if possible. The rules of construction of constitutional law require that two sections be so construed, if possible, as not to create a repugnancy, but that both be allowed to stand, and that effect be given to each.
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> "It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. * * * Therefore, particular phrases of a Constitution must be construed with regard to the remainder of the instrument and to the express intent of the constitutional convention in adopting it. For example, the first ten amendments and the original Constitution were substantially contemporaneous and should be construed in pari materia.

> "Cases may arise where it is impossible to harmonize or reconcile portions of a Constitution. In such a case, if there is a conflict between a general and a special provision in a Constitution, the special provision must prevail in respect of its subject matter, as it will be regarded as a limitation on the general grant."

Section 55 of the same volume, pages 665 and 666, is as follows:

> "An elementary rule of construction is that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous. Fundamental constitutional principles are of equal dignity and none must be so enforced as to nullify or substantially impair the other. Hence, as a general rule, a court should avoid a construction which renders any provision meaningless or inoperative and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.
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> "The rule is well established that no court is authorized so to construe any clause of the Constitution as to defeat its obvious ends where another construction equally accordant with the words and sense thereof will enforce and protect it. * * *"

Section 61 of the same volume, pages 674 and 675, is as follows:

> "The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. A constitutional clause must be construed reasonably to carry out the intention of

> the framers, which gives rise to the corollary that it should not be construed so as to defeat the obvious intent if another construction equally in accordance with the words and sense may be adopted which will enforce and carry out the intent. The intent must be gathered from both the letter and spirit of the document.
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> "It has been very appropriately stated that the polestar in the construction of Constitutions is the intention of the makers and adopters.
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> "Wherever the purpose of the framers of a Constitution is clearly expressed, it will be followed by the courts. Even where terms of a constitutional provision are not entirely free from doubt, they must be interpreted as nearly as possible in consonance with the objects and purposes in contemplation at the time of their adoption, because in construing a constitutional provision, its general scope and object should be considered."

The Missouri courts have followed this construction without exception. In the case of State v. Koeln, 61 S.W. (2d) 750, l.c. 755, it was said:

> "* * * * But under established rules of construction the courts should resolve seemingly conflicting or overlapping provisions of the Constitution by harmonizing them and rendering every word operative, if possible, so as to give effect to the whole. * * * *"

In the case of State v. Williams, 144 S.W. (2d) 98, l.c. 103, the court said:

> "It is elementary that in constitutional construction all the provisions bearing upon a particular subject are to be considered together and effect given to the whole. * * * *"

Applying the foregoing rules of construction to these two sections of the Constitution, it could easily be said that the article setting the compensation of the sheriff is a specific provision, and the section prohibiting the increase in compensation a general one, so the specific provision prevails and would be an exception or limitation to the general provision. This is especially true where both sections were passed or adopted at the same time, because it must be assumed that the framers of the Constitution, and the people who adopted it, had both sections in view when they acted.

In applying the mandate that the courts must harmonize, if possible, what might seem to be conflicting sections of a Constitution, the court could say, and rightfully so, that after adoption of the Constitution, and on July 1, 1946, the sheriff's compensation will be governed by Section 13, Article VI of the Constitution of 1945, and that thereafter his compensation will not be increased in view of Section 13, Article VII of the Constitution of 1945. This would harmonize and make operative both sections, thereby carrying out the apparent intent of the framers of the instrument and of the people who adopted it.

The foregoing discussions were, in the main, based upon the assumption that House Committee Substitute for House Bill No. 372 did increase the sheriff's salary. To this assumption, however, we do not subscribe, because under the previous fee statute which was repealed by both House Bill No. 372 and the Constitution, as of July 1, 1946, the sheriff, in counties such as Iron, was entitled to fees as provided by Section 13450, R.S. Mo. 1939, which provides:

> "The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. * * * * *"

The maximum, under this section, was $5,000. The new act

set the salary at $1,800.

The fact the sheriff did not collect the maximum under the old fee statute would make no difference. In the case of State ex rel. v. Farmer, 271 Mo. 306, l.c. 314, 316 and 317, the court said:

> "While defendants concede that the amount of cash salary relator is entitled to receive under the provisions of the Act of 1915, does not exceed but exactly equals the amount he was entitled to retain under the act of 1913, out of his fees collected, yet they contend that unless the fees which he actually earned and collected amount each year to a sum equal to the $2000 yearly cash salary, the provisions of the Act of 1915 are unconstitutional, for that they in fact bring about an increase in his compensation during the currency of a given term.
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> * * * * * * * * * * * * *
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> "So, while it is conceded as the figures indicate, that there has been no increase in the stated amount fixed by law as the pay of a circuit clerk during the current term of this relator, yet it is urged there has been an increase in fact, unless the fees collected each year amount to as much as $2000, regardless of the statutory provision existing when relator took office of retaining as his annual compensation $2000 out of the fees earned and collected.
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> "The Act of 1915 putting circuit clerks upon a salary basis, was, it is plain, designedly enacted so that the several salaries fixed thereby and made payable

monthly in cash should exactly equal the amounts fixed by statute in 1913, as the amounts which could be retained by each circuit clerk as his annual compensation out of the fees he earned. As we gather the position and contention of defendants, they concede that in all cases and counties wherein the fees actually earned by the several circuit clerks amount in any one year to the sum fixed as their salaries by the Act of 1915, the act is constitutional. At least, if defendants do not concede this, the logic of their contention concedes it for them. The result of such a construction is that some circuit clerks in some counties which contain from twenty-five to thirty thousand population would get the salary fixed by the Act of 1915 some years, and get fees other years, and it would be impossible ever to tell what method of payment should be employed, or how much compensation the circuit clerk was to get till the end of the year. Likewise in some of the counties these officers would be paid salaries and in others still remain upon a fee basis of compensation. Such results could not have been in legislative contemplation; since two cardinal canons of construction upon the attack of unconstitutionality confront us: One of these is that we must be convinced beyond a reasonable doubt that an act is void under the Constitution before we are warranted in so declaring it (State v. Baskowitz, 250 Mo. 82); the other is that where one construction of a statute would render the act absurd and unenforceable and the other the converse, we are required to adopt the latter rather than the former. (State ex rel. v. Gordon, 266 Mo. l.c. 411.)

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"We are constrained therefore to hold that the Act of 1913 (Laws 1913, p. 702) fixed the basic compensation for clerks of the circuit courts and that the amounts severally set forth in that act as the sums in fees which such clerks could each retain as

> their several compensations, constitute the salaries from which we are to determine whether the Act of 1915 increases such compensation. We have seen that the amounts are the same in counties of the class here in question and conclude that as to the relator there has been no increase and the act is constitutional. Let the judgment of the learned judge nisi be affirmed. * * * * "

As can readily be seen, the sum of $1800 falls far short of the former maximum of $5000. The addition of civil fees would not, in all probabilities, exceed the former maximum, but in the event they did, we think this act would be constitutional according to the rules of construction hereinbefore cited and discussed.

In the event this act was, as you suggest, in conflict with the county Budget Law, your question would be answered by Section 2 of the Schedule of the 1945 Constitution, supra.

We do not believe, however, that this construction is necessary, because the county Budget Law, Section 10911, R.S. Mo. 1939, places salaries of officers in the fourth classification. It provides six different classifications so that when it is necessary to add to an item in the budget it should be revised and the amount taken from items of less priority for which allowances have been made or budgeted. In the case of Gill v. Buchanan County, 142 S.W. (2d) 665, l.c. 668, 669, the court said:

> "Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries to pay salaries of $4,500 each. * * * * This court has held that the purpose of the County Budget Law was 'to compel * * * county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. (2d) 340, 342.

> "To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

Under authority of Section 10927, R.S. Mo. 1939, which provides for revision of a county budget, and the Gill case, supra, your budget should be revised if it does not contain funds in the fourth classification sufficient to pay the sheriff's salary.

Conclusion.

It is, therefore, the opinion of this department that in counties of the fourth class House Committee Substitute for House Bill No. 272 applies to sheriffs now in office; that said bill is not in conflict with Section 13, Article VII of the Constitution of 1945, prohibiting increases in compensation during the term of office to which an officer was elected; and that the county Budget Law does not preclude the payment of the salary of a sheriff as provided for in the act, nor would the payment thereof violate said law.

Respectfully submitted,

APPROVED:

W. BRADY DUNCAN
Assistant Attorney General

J. E. TAYLOR
Attorney General

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