

SHERIFF ST. LOUIS COUNTY: Appointment of deputies, and salaries.

December 6, 1940.

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Hon. Forrest Mittendorf  
2671 Carson Road  
Overland, Missouri

Dear Sir:

Receipt is acknowledged of your letter in which you asked for an opinion upon several questions. Your first question pertained to the effective date of S. C. S. H. B. 480, enacted by the General Assembly of 1939, and found in Laws of Missouri 1939, at page 679 and following. Under the opinion referred to in your letter the entire act became law on November 1, 1939, but by the terms of the act the payment of salaries to the officers mentioned in Section 1 is not to be in force until the terms of the officers holding at the time of the taking effect of the act had expired in order that it might not be in conflict with prohibition against increasing salaries during the term.

Your opinion request presents these additional questions for answer. Is Section 1, Laws 1927, p. 465 repealed, by the act appearing in Laws 1939, p. 679? And, what is the authority of the County Court with respect to approval of the individual appointed as deputy sheriff and the fixing of salaries?

Section 1, Laws 1927, p. 465, was not placed in its proper position in the Revised Statutes of 1929. The appendix of the Revised Statutes of 1929 (Vol. 3, p. 3932) gives legislative recognition to this error and the Section was then incorporated as Section 14872, R. S. Mo. 1929.

Said Section provides for the appointment of not to exceed 20 special deputy sheriffs in counties having a population of not less than 100,000 or more than 250,000 inhabitants. The compensation provided for these

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special deputies is not more than \$5.00 per day. These appointments before becoming effective must have the approval of the Circuit Court.

The act appearing in Laws 1939, p. 679, also provides for the appointment of deputy sheriffs in certain counties. However, the provision there relates to counties of from 200,000 to 400,000 and to regular deputies appointed by the sheriff. Section 7 of the act provides: "It shall be the duty of the \* \* \* sheriff of the county \* \* \* to appoint deputies \* \* \* to properly perform the duties of \* \* \* (his) office." Thus it is clear that regular deputies appointed under this provision are not subjected to the approval of anyone.

Section 7 further provides: "The salary of the deputies \* \* \* shall be determined by the county court of said county and made a matter of need by said court and paid out of the county treasury." This provision is clear and needs no further exposition except to say that it vests the county court with the authority to fix the salaries of the deputy sheriffs. However, there is nothing in the statute that requires the county court to fix the salaries of the deputies on a uniform basis commensurate with the duties performed.

Our research does not disclose that Section 14872, supra, has been expressly repealed. It is not repealed by the Act appearing in Laws 1939, p. 679, because there is no inconsistency between the two. The acts relate to different size counties and a different class of deputy sheriffs. In order for a repeal by implication to be effected there must be an irreconcilable inconstancy existing between later and earlier statutes (State ex rel. Wells v. Walker 34 S. W. (2d) 124). Section 7, Laws 1939, p. 679, and Section 14872 R. S. Mo. 1929, are entirely harmonious, in that one prescribes the procedure for the appointment of regular deputies and the other for special deputies. And this is true even though there be a county that would fall within both the population classes fixed by these acts.

And in addition to the above mentioned laws we have the general statute applicable to the sheriffs of all counties. Section, 11513, R. S. 1929, which provides that any sheriff may appoint one or more deputies with the approbation of the Judge of the Circuit Court of the county. This law was first enacted in its present form in 1855 and has been carried in the statutes in the form in which first

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enacted to the present day. Both of the acts mentioned in your letter are of much later date and are special rather than general.

In addition to the rule mentioned above concerning the construction of statutes, we think the rules set out in the following quotation from the case of State ex rel. v. Brown, 334 Mo. 781, l. c. 787, are also applicable to the problem.

"It will be observed that Section 4556, except the last proviso which is not pertinent to the matter here in controversy, relates to corporations in general while Section 5613 relates only to a particular class of corporations, to-wit, building and loan associations. In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view of giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' (Tevis et al. v. Foley, 325 Mo. 1050, 1054, 30 S. W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S. W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S. W. 122)."

#### CONCLUSION

It therefore is our conclusion that Section 1, Laws of 1927, p. 465, has not been repealed either expressly or by implication; that a new special section of law has been enacted applying to all counties of the

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size mentioned in the act in which class St. Louis County falls; that the new act is not in conflict with Section 1, Laws of 1927, p. 465, mentioned above, nor is in conflict with the general act, Section 11513, R. S. 1929, but is rather an exception to it. It is our further conclusion that the sheriff of St. Louis County may now appoint his regular deputies without the approval of anyone, but that the county court is vested with the authority to fix the salaries of the deputies appointed and may do so without regard to keeping said salaries uniform.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General.

W. O. JACKSON  
Assistant Attorney General.

APPROVED:

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COVELL R. HEWITT  
(ACTING) Attorney General

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