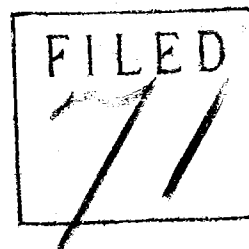


COUNTY TREASURERS: House Bill 255 becomes effective October 10, 1941, but operation may be postponed to some treasurers.

August 20, 1941

Hon. Everett H. Pittman
Treasurer
Clinton County
Plattsburg, Missouri.



Dear Sir:

Under date of August 9, 1941, you wrote this office requesting an opinion as follows:

"House Bill No. 255 passed by our last General Assembly and signed by the Governor yesterday according to the press, this bill setting the compensation by statute of County Treasurer's instead, being set by our various County Courts.

"Here in the past, you no doubt know that our compensation is set by the Court as a matter of record when we enter office for our term and in my case, this being a matter of record, this compensation is paid during my term which is four years, I have always thought, that you could not increase or decrease the compensation during the term of office, however, what we wish to know, does this bill become effective during our present term of office, thanking you for this information,"

Section 36, Article IV of the Constitution of Missouri directs when all laws passed by the General Assembly shall become effective. This section of the Constitution is as follows:

"No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, 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."

House Bill No. 255, enacted by the Sixty-first General Assembly, has no emergency clause, nor is its effective date deferred by its terms, and it would therefore become effective ninety days after the adjournment of the Sixty-first General Assembly.

Recently an opinion was prepared by this office and furnished to Dwight H. Brown, Secretary of State, as to the effective date of the laws enacted by the Sixty-first General Assembly, a copy of which opinion is herewith enclosed. By that opinion all laws not containing an emergency clause, enacted by the Sixty-first General Assembly, become effective on the 10th day of October, 1941.

While House Bill No. 255, enacted by the Sixty-first General Assembly, will become a part of the law of the State of Missouri on the 10th day of October, 1941, as held in the opinion of this department to the Secretary of State, it is necessary to consider whether or not it will become operative on that date for the purpose of paying the compensation of all county treasurers included within its terms. A law may be in existence but be inoperative until a future date, as was held in *State ex rel. v. Dirckx*, 211 Mo. 568, at l. c. 578, as follows:

"* * * That a statute or constitutional provision may have a potential existence, but which will not go into actual operation until a future time, is familiar law. (State ex rel. v. Wilcox, 45 Mo. l. c. 464; State ex rel. v. Pond, 93 Mo. l. c. 625; Ex parte Snyder, 64 Mo. l. c. 61.)
* * * * *"

And again in the case of State ex rel. Otto v. Kansas City, 276 S. W. 389, at l. c. 395:

"It is familiar law that a statute or a constitutional provision may have a potential existence, though it will not go into operation until a future time. State ex rel. v. Dirckx, 211 Mo. 568, loc. cit. 578, 111 S. W. 1; Poindexter v. Pettis County, 295 Mo. 629, 246 S. W. 38, loc. cit. 40; State ex rel. Brunjes v. Bockelman (Mo. Sup.) 240 S. W. 209, loc. cit. 211. Where not prohibited by the Constitution, the Legislature may direct that different parts of the same statute shall go into effect at different times, and, even under constitutional provisions requiring all parts of a statute to take effect at the same time, it is sufficient that the statute becomes effective as an entirety at one time, notwithstanding that, as to some persons or matters affected by it, the statute becomes operative at different times. 36 Cyc. 1201. The time a particular statute shall take effect may be fixed by another statute passed at the same session. Honeycutt v. Ky. Co., 40 Mo. App. 674, cited with approval in State ex rel. Brunjes v. Bockelman, supra."

In your letter you state you are under the impression the compensation of an officer could not be increased or decreased during his term of office. This is an erroneous impression. There is no statutory or constitutional prohibition against decreasing the compensation of a state or county officer during his term of office, but there is a constitutional prohibition against increasing the compensation of any officer during his term of office. That is the reason we must consider whether or not House Bill No. 255, enacted by the Sixty-first General Assembly, becomes operative on all county treasurers included within its terms at the time it becomes effective. The constitutional prohibition against increasing the compensation of an officer during his term of office is contained in Section 8, Article XIV, of the Constitution, and is 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."

In connection with the foregoing remarks concerning the increasing of the compensation of an officer during his term, your attention is called to the case of Givens v. Daviess County, 107 Mo. 603. This was a case involving the compensation of a county treasurer and the following quotation is taken from page 608:

"A public officer is not entitled to compensation by virtue of a contract, express or implied. The right to compensation exists, when it exists at all, as a creation of law, and as an incident to the office. Gammon v. LaFayette Co., 76 Mo. 675; Koontz v. Franklin Co., 76 Pa. St. 154; Fitzsimmons v. Brooklyn, 102 N. Y. 536; Walker v. Cook, 129 Mass. 579; Knappen v. Supervisors, 46 Mich. 22; City Council v. Sweeney, 44 Ga. 465. In the

absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his duties enlarged without the impairment of any vested right. State ex rel. v. Smith, 87 Mo. 158; City of Hoboken v. Gear, 27 N. J. L. 278; United States v. Fisher, 109 U. S. 143."

Further, in deciding the case of Givens v. Daviess County, supra, the Supreme Court applied Section 8, Article XIV of the Missouri Constitution and, in so doing, used the following language, at l. c. 610:

"We do not think the order had the effect of accomplishing a change in the salary for services subsequent to its date for the reason that the terms used, 'in full of all demands as such treasurer,' does not express such an intention. Those terms imply rather that this payment was in full of salary to that date, but as such a construction would increase the salary, which could not be done under the constitution, (art. 14, sec. 8,) we must infer that it was only intended to cover the salary for two years, leaving the additional period for future adjustment.

"Again, we do not think the existing salary could have been detached from the office without notice to the officer. While the court had the right to decrease the compensation plaintiff had the right, which appears to have been his only remedy, to resign the office if dissatisfied with the change."

Hon. Everett H. Pittman

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CONCLUSION.

The conclusion is reached that House Bill no. 255, enacted by the Sixty-first General Assembly, will become effective and a part of the law of the State of Missouri on the 10th day of October, 1941, and fixes the salaries of county treasurers included within its terms except if, by its terms, it provides for an increased compensation for any county treasurer, it can not become operative as to such increase by reason of Section 8, Article XIV of the Constitution, until the commencement of the next term. If, by its terms, it reduces the compensation of any county treasurer such reduction becomes operative on the effective date of the law.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

WOJ/rv

Enc.