CONSTITUTIONAL LAW: Secs. 29 and 52, Art. III, Constitution of 1945, must be read together in determining effective date of bills.

LEGISLATION: Emergency clauses in H.B.s 244, 255, 264, 63rd General Assembly invalid. H. B. 244 will not increase salary of clerk of Supreme Court during the term in which it becomes effective, but can increase salary of deputy clerks. H.B.s 255 and 264 operative as soon as effective.

August 13, 1945

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

We have your letter of recent date, which reads as follows:

> "House Bill No. 264, passed by the General Assembly and signed by the Governor, provides for increasing the salary of the chief clerk and certain other employees of the State Department of Education.
>
> "House Bill No. 255, passed by the General Assembly and signed by the Governor, provides for increased salary of the Marshal of the Supreme Court.
>
> "House Bill No. 244, passed by the General Assembly and signed by the Governor, provides for increasing the salary of the Clerk of the Supreme Court and other clerks of the Supreme Court.
>
> "Each of these three bills carry a purported emergency clause. Will you please give me an opinion as to when the increase in the salaries of House Bill No. 264, House Bill No. 255, and House Bill No. 244, will become effective?"

As stated in your letter, each of the three bills inquired about contains a purported emergency clause. Two sections of the constitution must be considered in determining the validity of such emergency clauses. Said sections are Nos. 29 and 52 of Article III, and they read as follows:

> "Section 29. No law passed by the general assembly shall take effect until ninety days after the adjournment of the session at which it was enacted, except an appropriation act or in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly shall otherwise direct by a two-thirds vote of the members elected to each house, taken by yeas and nays; provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that the laws previously passed and not effective shall take effect ninety days from the beginning of such recess."
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> "Section 52. A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five per cent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.******** Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise."

While Section 29, supra, provides that an act may go into effect sooner than ninety days after the adjournment of the legislature "in case of an emergency," yet Section 52 provides that all laws except those "necessary for the immediate preservation of the public

peace, health or safety" (and some others not material to our discussion here) shall be subject to referendum at any time within ninety days after the adjournment of the legislature. As we shall hereinafter point out, the courts have always construed these two constitutional provisions together and have held that the emergency referred to in Section 29 must be such as makes it "necessary for the immediate preservation of the public peace, health or safety" that a statute go into effect sooner than ninety days after the adjournment of the legislature.

The Supreme Court of this state some 25 years ago had occasion to consider two almost identical provisions of the constitution of Missouri in the case of State ex rel v. Sullivan, 283 Missouri 546, 224 S.W. 327. In that case the court said (224 S. W. l. c. 337):

> "The next contention is that although we may rule that the usual emergency clause of a measure may not prevent its reference, as we have ruled above, yet it is contended that the expressions in section 81 of the measure before us are such as to amount to a legislative declaration that the measure is one 'necessary for the immediate preservation of the public peace, health, or safety,' and that the courts cannot go back of such legislative declaration.
>
> "In the first place the language in said section 81 of the act of 1919 (Laws of 1919, p. 484) is not such a legislative declaration, and with this the matter might end. In a valuable note in 36 Cyc. p. 1194, it is well said:
>
> "'Under a constitutional provision for the submission of acts to the people before their taking effect, "except as to laws necessary for the immediate preservation of the public peace, health or safety," a clause intended to put them in effect before the time prescribed by the general

law must not only declare an emergency, but must also set forth such an emergency as described in the above-quoted provision of the Constitution.'

"This emergency clause touches neither side nor bottom, when measured by this rule. But both sides urge and discuss the larger question, as to whether or not such legislative declaration would foreclose the matter in the courts. Upon this question the courts are divided, and in our judgment, some have been lead into error by reason of court rulings upon mere emergency declarations. Before the days of initiations and referendums all the state constitutions contained sections similar to our section 36 of article 4 of the Missouri Constitution. The courts were liberal in construing the emergency provision of such sections. They largely ruled that when the lawmaking body said that an emergency existed the matter was foreclosed. It was simply a matter of the time at which the law became effective, and had no real substance. And since the referendum provisions of state constitutions some courts, viewing the 'peace and safety' clause of these constitutional provisions in the light of mere emergency clauses of a law, have ruled that, if the lawmaking body declared that the measure was for the 'immediate preservation of the peace, health or safety,' such legislative declaration was binding upon the courts and a finality. To the rule in this line of cases we do not agree. The very substance of a constitutional right could be taken from the people by an overanxious and hostile legislative body. The right here involved is not only constitutional, but one of vital importance and of large proportions. If the courts cannot view the whole measure, and from it determine whether or no the lawmakers overstepped the constitutional

> restrictions in denying the referendum of the measure by their ukase on the subject of 'immediate preservation of peace, health or safety' then the constitutional referendums become a farce. It becomes a legislative referendum, rather than a constitutional referendum, because by a mere false declaration as to 'the peace, health or safety' every measure could be precluded from the constitutional referendum."

Later in the foregoing opinion, the court said:

> "The reason of the thing lies with this rule. By the referendum provision of our Constitution, as we have construed it, supra, no measure subject to the referendum can be withdrawn therefrom by a mere emergency clause. Nor should the people be denied their constitutional right of referendum by a mere declaration of 'immediate preservation of the peace, health or safety' unless such declaration is borne out by the face of the measure itself. The courts have the right to measure the law by the yardstick of the Constitution, and determine whether or not the lawmakers breached the Constitution in making the declaration."

After discussing cases from other states on the same question, the court further said in the Sullivan case (224 S. W. 1. c. 339):

> "So that in the case at bar, had the lawmakers in section 81 of the measure actually declared such measure to be necessary for the 'immediate preservation of the peace, health or safety,' we would hold such section void upon a comparison of the measure as a whole with the constitutional provisions of section 57 of article 4 of the Constitution. The words 'necessary for the immediate preservation,' as found in our Constitution, must be given effect, and are of vital importance in measuring the legislative act by the

> Constitution. Many acts may be necessary to public peace, health, and safety, yet not be 'necessary for the immediate preservation of the public health, peace or safety.'"

The above case has been consistently followed by the Supreme Court of Missouri. In the later case of State ex rel v. Becker, 289 Mo.660, 233 S. W. 641, the decision in the Sullivan case was attacked for several reasons, but the Court expressly approved the holding of the Sullivan case on the question of the validity of an emergency clause in a legislative act and of the power of the Court to question such validity. The principal opinion in the Becker case said:

> "There is but a single legal proposition presented by this record to this court for determination, and that is, Has the Legislature of the state the constitutional authority under section 57, art. 4, of the Constitution, to enact a law, and debar the power of the courts of the state from passing upon the question as to whether or not the law is subject to referendum by adding thereto the words, 'This enactment is hereby declared necessary for the immediate preservation of the public peace, health, and safety, within the meaning of section 57, of article 4 of the Constitution of Missouri'? * * * * * This question has been most elaborately and ably discussed by counsel for the respective parties, and all the authorities bearing upon the question from the various states of the Union have been cited; and, after a thorough consideration of the same, I am fully satisfied that the law of the case was, and is, fully and correctly declared by Judge Graves in the case of State ex rel v. Sullivan, 224 S. W. 327, where the same legal proposition was presented to this court for determination that is here presented by this case. I fully concurred in the views as there expressed by Judge Graves, and adopt them as my views of the law of this case."

The Sullivan case was also cited with approval on the same question in State ex rel v. Maitland, 296 Mo. 338, 246 S. W. 267, and Fahey v. Hackmann, 291 Mo. 351, 237 S. W. 752. Also in the case of State ex rel v. Linville, 318 Mo. 698, 300 S. W. 1066, 1068, the Court said:

> "It was held in the case of State v. Sullivan, 283 Mo. 546, 224 S. W. 327, that these two sections of the Constitution must be construed together; that a declaration in a bill that it was an emergency measure within the meaning of the Constitution, did not make it so; that the emergency must appear in fact upon the face of the bill to be within the terms of the Constitution, authorizing an emergency clause which would put the act into immediate effect."

From the above we think it is clear that even though a legislative act declares that an emergency exists and that the act is "necessary for the immediate preservation of the public peace, health or safety," the Courts are not bound by such declaration , but may and should look at the whole act to determine whether in fact such an emergency is set forth in the act as will authorize the legislature to cause the act to become effective sooner than ninety days after the adjournment of the legislature. With this principle in mind, we turn to the various acts under consideration to see if they are such as justify emergency clauses, putting them into effect immediately upon passage and approval.

H. B. 244 is an act to repeal Section 13273, L. 1943, p. 402, relating to the clerk of the Supreme Court and deputies, their salaries and appointment, and enacting in lieu thereof a new section relating to the same subject matter. A comparison of said bill with Section 13273, supra, will show that all that is accomplished by the act is an increase in the salary of the clerk and his deputies. As pointed out above, if an emergency exists, it must be set forth in the face of the act. The Supreme Court has expressly held that

an act which merely increases salaries of officials is not one for which an emergency clause can be made effective. In the case of State ex rel v. Linville, supra, a statute had been passed increasing the salary of a County Superintendent of Schools and the act contained an emergency clause. If the emergency clause was valid and effective, the act would have gone into effect three days before the election of the County Superintendent, and hence would have entitled him to the increased salary. The emergency clause in that case read as follows:

> "Sec. 4. Emergency Clause. The fact that the annual school election will be held on the first Tuesday in April, 1919, at which time county superintendents of public schools for the several counties in this state will be elected, creates an emergency within the meaning of the Constitution; therefore, this act shall take effect and be in force from and after its passage."

After discussing the law on emergency clauses in that case, the Court said (300 S. W. l.c. 1068):

> "Plainly the emergency clause in the act does not state a condition to which the emergency provision of the Constitution could apply."

The Linville case was followed in the case of Hollowell v. Schuyler County, 322 Mo. 1230, 18 S. W. 2nd 498.

It would seem, therefore, that inadequacy of salaries of public officials does not constitute such an emergency as would make it "necessary for the immediate preservation of the public peace, health or safety" that an act increasing them should go into effect earlier than the ordinary time provided by the Constitution. In fact, H. B. 244 does not declare that the act is "necessary for the immediate preservation of the public peace, health or safety." It reads as follows:

> "Section 3. This act relates to the compensation of the Clerk of the Supreme Court and his deputies, changing the manner of payment of the salaries of certain deputies to conform with the new Constitution of Missouri, and provides for expediting the work of the office. An emergency is, therefore, declared to exist within the meaning of the Constitution, and this act shall be in full force and effect upon its passage and approval by the Governor."

In the Sullivan case, supra, the Court inferentially, at least, held that an emergency clause to be valid would have to contain such a declaration. (See first quotation from said case above.) Also in the case of Fahey v. Hackmann, supra, the Court in discussing an emergency clause said:

> "This act of November 11, 1921, does not have what is called a 'peace, health or safety' clause, and it would be ineffective if it did. State ex rel v. Becker 233 S.W. 641. It only has the emergency clause set out above."

The emergency clause in that case read as follows(237 S. W. l.c.761):

> "Sec. 26. The fact that many of the beneficiaries of this act are not employed and in dire need of the partial compensation sought to be provided for them in this act creates an emergency within the meaning of section 36 of article 4 of the Constitution of the state of Missouri, and this act shall be in full force and effect immediately upon being approved and signed by the Governor."

Therefore, the subject matter of H. B. 244 is not only insufficient to justify an emergency clause, but the emergency clause itself is not in the proper form required by the Constitution.

H. B. 255 is an act to repeal Section 2050 R. S. Mo. 1939, relating to the compensation of the marshal of the Supreme Court and enacting in lieu thereof a new Section No. 2050, relating to the compensation and expenses of said marshal, and the expenses of transporting prisoners, employment of a guard and disposition of fees received by the marshal. Under Section 2050 R. S. Mo. 1939, the marshal is paid compensation at the rate of $2500 per annum, in monthly installments, plus fees of not to exceed $500 per year. Other sections of the statutes entitle the marshal to mileage and other expenses. (Sections 13414, 13416, 9004).

Under H. B. 255, the marshal is to be paid compensation for his services at the rate of $4500 per annum, in monthly installments, and is to be reimbursed for his actual expenses of travel and subsistence while traveling. Said H. B. 255 also provides for the compensation and expenses of a guard and of prisoners in certain cases. The ultimate effect of the new act is to change the amount of the marshal's compensation and the method of reimbursing him for expenses, with additional provisions as to the transportation of prisoners. We do not see how the subject matter of this bill could be any more of an emergency than an increase in the salary of an officer, which was discussed above. The last clause of H. B. 255 reads as follows:

> "Section 2. This act relates to the compensation of the marshal of the Supreme Court and the transportation of prisoners by him, changing the method of compensation to conform to the new Constitution of Missouri, and it being necessary for the immediate preservation of the public peace, health and safety, an emergency is therefore declared to exist within the meaning of the Constitution and this act shall be in full force and effect upon its passage and approval by the Governor."

It may be the legislature, in referring to "changing the method of compensation to conform to the new Constitution of Missouri" had in mind Section 13 of

of article 6 of the Constitution which reads 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."

Even if said section applies to the marshal of the Supreme Court, it will not be effective until July 1, 1946, because statutes covering such matters as therein referred to will continue until that date, (Section 2, Schedule to Constitution) so that there is no "immediate" necessity for a change in Section 2050 of the statutes.

To create an emergency there must be a situation calling for the "immediate preservation of the public peace, health or safety." In 59 C.J. 692, it is said:

> "'Immediate' refers to laws that should take effect in order to preserve the public peace, health, or safety before the time when the people under the provisions of the referendum would have an opportunity to vote on them. 'Immediate' qualifies the words 'public peace, health and safety.'"

Likewise, in State ex rel v. Sullivan, supra, 224 S.W. l.c. 339, the Court said:

> "The words 'necessary for the immediate preservation,' as found in our Constitution, must be given effect, and are of vital importance in measuring the legislative act by the Constitution. Many acts may be necessary to public peace, health and safety, yet not be 'necessary for the

> immediate preservation of the public peace, health, or safety.'"

It must be assumed that the legislature will see to it that H. B. 255 is made effective before Section 13 of Article 6 of the Constitution goes into effect July 1, 1946. At any rate, that is a future problem and is not one for immediate consideration.

In view of all of the above, we do not believe that H. B. 255 sets forth an emergency within the meaning of the Constitution.

H. B. 264 is an act to repeal Section 10600 R.S. Mo. 1939, relating to the employment of a chief clerk in the office of the State Superintendent of Schools and to enact in lieu thereof a new act, relating to the appointment, duties and salaries of employees of the State Department of Education.

Said Section 10600 R. S. Mo. 1939 reads as follows:

> "The state superintendent shall be entitled to employ a chief clerk, who shall sustain the same relations to the state superintendent as are sustained by the chief clerks of other state officers. The chief clerk shall perform such clerical and other work as may be directed by the state superintendent, and shall hold his office at the pleasure of the state superintendent."

It will be noticed by the foregoing section that the State Superintendent is only authorized to employ a chief clerk. By Section 10604 of the statutes he is authorized to employ a negro inspector of negro schools. By Section 10536 he is authorized to employ certain vocational education employees, and by Section 10557 he is authorized to employ an inspector of teacher-training. We find no other statutes expressly authorizing the State Superintendent to employ other persons to assist him in carrying out the duties of his office. It is a well known fact that the State Superintendents have always had a large staff of employees.

It is very evident that the State Superintendent could not run his office efficiently and perform the many duties enjoined upon him by law without a large staff of employees. Education is one of the main activities of the state and a reading of the statutes will show that the State Superintendent has multiple duties to perform. It might be suggested that since the State Superintendent is charged by law with the performance of so many important duties and has only express authority to employ a very few people, an emergency exists and that the general assembly was trying to meet that emergency by enacting H. B. 264, giving to the State Superintendent specific authority to employ sufficient help to perform the duties of his office and by inserting an emergency clause in said act. In other words, it might be suggested that since one of the most important state departments is without authority to employ sufficient help to carry on its functions an emergency within the meaning of the Constitution exists. Let us examine such suggestion.

In the first place, as was pointed out in the first part of this opinion the Constitution requires that an act must declare or set forth the emergency with which it purports to deal. Merely declaring that an emergency exists does not make it so. H. B. 264 does not state what emergency exists except to say "it is necessary that this act be in effect at the earliest possible time, in order that the State Department of Education may properly carry out its duties as prescribed by law." Why the State Department of Education cannot properly carry out its duties in the absence of such act is not set forth.

In the second place, the mere fact that there are no statutes expressly authorizing the State Superintendent to employ clerks, stenographers, supervisors and others does not necessarily mean that he does not have such authority. It is well established that where express authority is given a public officer to do certain things that authority carries with it implied authority to do everything necessary to make the express authority efficacious. In State ex rel v. Wymore, 345 Mo. 169, 132 S. W. 2nd 979, 987, the Court said:

> "The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' Throop's Public Officers, Sec. 542, p. 515.
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> "'Necessary implications and intendments from the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication.' 59 C.J. Sec. 575, pp. 972, 973; Hudgins v. Mooresville Consol. School Dist., 312 Mo. 1, 278 S. W. 769; State ex rel. Wahl v. Speer, 284 Mo. 45, 223 S.W. 655; In re Sanford, 236 Mo. 665, 139 S. W. 376."

Also in State ex rel v. Hackmann, 276 Mo. 110, 207 S. W. 64, 65, the Court said:

> "But it is also well-settled, if not fundamental, law that, whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual is conferred by implication."

In the case of State ex rel v. Thompson, 316 Mo. 272, 289 S. W. 338, the Court was considering the

authority of the Board of Permanent Seat of Government to appoint an assistant commissioner of the Permanent Seat of Government. The statutes only expressly authorized the appointment of a commissioner of the Permanent Seat of Government and as many watchmen as the Board might deem necessary for the proper protection of the state's property. The Board had, however, appointed an assistant commissioner of the Permanent Seat of Government and the authority of the Board so to do was attacked in this suit. In discussing the case the Court said (289 S.W. l.c. 340):

> "While the foregoing covers the authority which has been specifically granted to the board as to the employment of assistants in the work of carrying out the duties and functions of the board of the permanent seat of government, there is no inhibition against the appointment or employment of such others as may be necessary to carry out its purposes, and, since said board is charged with a duty and responsibility of looking after and protecting such public property of great value, it was doubtless the intent of the Legislature to leave such appointees and employees and the amount of their compensation to the discretion of the board. This is manifested by the provisions of section 83 of Appropriation Act of 1925, found at page 33 of the 1925 Session Laws, which appropriates $185,930 in a lump sum to meet the contingent expenses of the board, including the salaries of 'engineers, firemen, assistant commissioner, watchmen, janitors, matrons, helpers and assistants as may be deemed necessary by the board.'"

The Court in that case recognized the implied authority of the Board of Permanent Seat of Government to employ such help as was necessary to properly carry out the duties of the Board, and the legislature had recognized that implied authority by appropriating money for the pay of various employees not expressly provided

for by statute. The same situation prevails with respect to the State Superintendent of Schools. The legislature certainly would not enjoin multiple duties upon that officer and expect him to do all those duties himself or with a small number of assistants expressly provided for by statute. The legislature has likewise recognized the implied authority of the State Superintendent to employ additional help not specifically provided for by statute by appropriating money for the pay of such employees. Reference to the appropriation act found at page 149, L. 1943 will show that item of $156000 is appropriated to pay "salaries of chief clerk, statisticians, high school inspectors, rural school inspectors, negro school inspectors, clerks, stenographers, janitors and extra help."

It cannot be contended, therefore, that the State Superintendent of Schools was without authority to appoint sufficient help to run his department prior to the passage of H. B. 264. In this respect, the State Superintendent stood in no different situation than other departments which had express authority to employ clerks and other assistants. He was limited in what he could pay them (except in the cases of the chief clerk, negro inspector and inspector of teacher-training, whose salaries were set by law), by the appropriation of the legislature for those purposes. The ultimate effect of H. B. 264 is to increase the salaries of the chief clerk and to set a ceiling upon the salaries of other employees of the department. As pointed out above in this opinion, inadequacy of compensation of public officers and employees does not constitute an emergency within the meaning of the Constitution.

Conditions much more threatening to the public peace, health or safety than those dealt with in the three bills under discussion here were held not to constitute an emergency within the meaning of the Constitution in the case of State ex rel v. Thompson, 19 S. W. 2nd, 642. In that case the Court said(l.c. 647):

> "The act, whether considered as a whole or with reference to a single one of its provisions, cannot be regarded as an emergent police measure. The early

> completion of the state highway system, the reimbursement of counties for money expended on the state highway system, the relief from congestion of traffic in areas adjacent to St. Louis and Kansas City, and a beginning of supplementary state highways in counties, are all desirable, and when accomplished will no doubt greatly contribute to the public welfare, and indirectly promote the public peace, health, and safety. But it cannot be affirmed that any of these things are necessary for the immediate preservation of the public peace, health, or safety."

So far as the emergency clauses are concerned, therefore, the three bills under discussion will go into effect ninety days after the adjournment of the present session of the 63rd General Assembly unless the General Assembly recesses for thirty days or longer and provides by joint resolution that said bills shall take effect ninety days from the beginning of such recess, in accordance with Section 29 of article 3 of the Constitution, supra. However, in order to answer your question, the real object of which is to determine when you shall commence issuing warrants in accordance with said three acts, it is necessary that we direct attention to another provision of the constitution. Section 13 of article 7 reads as follows:

> "The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

It is held that a provision like the above applies only to officers having a fixed term. In 46 C.J. 1023, it is said:

> "A constitutional prohibition against changing the compensation of an officer during his term applies only to officers having a fixed and definite term."

Also in the case of State ex rel v. Farmer 271 Mo. 306, 196 S.W. 1106, 1109, we find the following:

> "The constitutional provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a term by statute only, and in no wise refers to the individual who may incidentally happen to be the incumbent for more than one term."

Also in the case of State ex rel v. Johnson, 123 Mo. 43, it was held that a city officer appointed by the council and subject to removal by it at pleasure is not an officer within the meaning of the Constitution prohibiting the increase of the salary of an officer during his term.

The appointment of the clerk of the Supreme Court is provided for by Section 13270 R. S. Mo. 1939, which reads as follows:

> "The supreme court, or a majority of the judges thereof, shall appoint a clerk for said court, who shall hold his office for six years, and until a successor is appointed and qualified."

It will be seen that the clerk of the Supreme Court is appointed for a definite term of six years. There is no question as to his being a state officer. The accepted definition of a public officer is found in the case of State ex rel v. Bus, 135 Mo. l.c. 331. That definition is as follows:

> "A public office is defined to be 'the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.' Mechem, Pub. Offices, 1. The individual who is invested with the authority and is required to perform the duties is a public officer."

A portion of the sovereign function of government is invested by the statutes in the clerk of the Supreme Court. For instance, he is authorized to administer oaths (Section 1884), to preside at and certify to depositions (Section 1920) and to do many other things which need not be mentioned here. He is required to give a bond (Section 13285). It is clear, therefore, that the salary of the clerk of the Supreme Court cannot be increased during his term of office and that, therefore, H. B. 244 cannot be effective to increase the salary of the clerk during the term in which said bill becomes effective.

Said H. B. 244 not only provides an increase in salary of the clerk, but it also provides increases in salaries of his deputies. Section 13273, page 402, Laws of 1943, provides as follows:

> "The Clerk of the Supreme Court shall hereafter receive a salary of Four Thousand Dollars; he may also employ not more than two deputies, who shall each receive a salary of Two Thousand Two Hundred Dollars per annum. * * * * * * * * * * *"

Said section does not prescribe any term of office for said deputies. In that case, said deputies would hold during the pleasure of the clerk. In 46 C. J., page 964, it is said:

> "Where the term of office is not fixed by law, the officer is regarded as holding at the will of the appointing power, even though the appointing power attempts to fix a definite term; and an officer removable at the pleasure of the appointing power has, in the strict meaning of the word, no 'term' of office."

Since the constitutional prohibition against increasing salaries only applies to officers having a fixed term, H. B. 244 does not violate said constitutional prohibition, in so far as the salaries of the deputies of the clerk of the Supreme Court are concerned. There is no objection to a bill that becomes effective as to some persons at one time and to other persons at another time. In State ex rel.v.Kansas City 310 Mo. 542, 561, the court said:

> "* * * 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 pro-

> visions 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. *"

Said H. B. 244 will, therefore, increase the salaries of the deputies of the clerk of the Supreme Court when it becomes effective as a law.

The appointment of the marshal of the Supreme Court is provided for by Section 2049 R. S. Mo. 1939, which reads as follows:

> "The supreme court shall appoint a marshal, and shall have power from time to time to fill any vacancy which may occur in such office. Such officer shall attend the sittings of the court, and shall have all the powers and perform all the duties enjoined by law on the officer attending courts of record, so far as may pertain to said court, and shall hold his office during the pleasure of the court."

While the marshal is designated an officer, he is not appointed for a definite term, and hence the constitutional prohibition against increasing his compensation during his term does not apply. Said H. B. 255 will, therefore, apply to the present marshal of the Supreme Court when it goes into effect.

As pointed out above, the effect of H. B. 264 is to increase the salary of the chief clerk and to provide certain limits for salaries of other employees. If the chief clerk is a state officer, then said act cannot be effective as to him. However, it should be noticed that by Section 10600, supra:

> "The state superintendent shall be entitled to employ a chief clerk, * * *. The chief clerk shall perform such clerical and other work as may be directed by the state superintendent, and shall hold his office at the pleasure of the state superintendent."

The statute refers to the employment of a chief clerk, not to his appointment. Furthermore, it says that he is to perform clerical and other duties as directed by the state superintendent. He serves at the pleasure of the state superintendent, and so far as we can find, no statutes invest him with any of the functions of government. He is not required to take an oath nor to give bond. He clearly falls within the classification of an employee and not that of an officer. The constitutional prohibition does not prevent increasing the compensation of employees, and, therefore, H. B. 264 will apply to the present chief clerk of the State Superintendent of Schools when it becomes effective.

The other persons affected by H. B. 264 are likewise employees and not officers. No duties or authority are given them by law, but they work under the direction of the state superintendent. Furthermore, said bill does not increase the salaries of such other persons because no salaries had ever been prescribed by law for them. Even if such other persons were officers, said bill would not violate the constitutional provision against increasing the salaries of officers during the term when no salaries had ever before that been prescribed. In the case of State ex rel v. Nolte, 172 S. W. 2nd, 854, 856, the Supreme Court of Missouri said:

> "A constitutional or statutory provision prohibiting a change of compensation after an election or appointment during the term of an officer does not apply where, prior to such time, no salary or compensation has been fixed for the office."

CONCLUSIONS

It is therefore the opinion of this office (1) that the emergency clauses in H. B. Nos. 244, 255, and 264 of the 63rd General Assembly are invalid and of no effect; (2) that all of said bills will become effective ninety days after the adjournment of the present session of the General Assembly unless said assembly should recess for thirty days or longer and should by a joint resolution provide that said bills go into effect ninety days after the beginning of such recess; (3) that H. B. 244 will not be effective to increase the salary of the clerk of the Supreme Court during the term in which said bill becomes effective, but it will be effective to increase the

salaries of his deputies immediately upon the bill becoming effective; and (4) that H. B. 255 and H. B. 264 will be effective as to the present incumbents of the respective offices and employments mentioned therein.

Respectfully submitted,

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APPROVED:

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HHK:CP