

SALARIES:  
OFFICERS:  
CITY OF ST. LOUIS:  
LIMITATIONS:  
RECORDERS OF DEEDS:

The salary of the Recorder of Deeds of the City of St. Louis is fixed by the General Assembly at \$6,750 per annum, and that the present Recorder is entitled to receive that amount of salary which he should have received since taking office, except that portion due more than five years prior to institution of suit.



July 20, 1955

Honorable Eugene P. Walsh  
Member, House of Representatives  
706 Olive Street  
St. Louis 1, Missouri

Dear Mr. Walsh:

By letter bearing date of June 4, 1955, you requested an opinion of this office on the following questions:

"1. Which of the following authorities fixes the salary of the Recorder of Deeds of the City of St. Louis; the General Assembly of Missouri or the Board of Aldermen of the City of St. Louis?

"2. If it be the General Assembly of Missouri, has it fixed the salary of the Recorder of Deeds of the City of St. Louis by Section 59.220 of the Revised Statutes of Missouri, 1949, which provides an annual salary of \$6,750.00 for recorders of first class counties?

"3. If the answer to question 2 is in the affirmative, is the Recorder of Deeds of the City of St. Louis, who has been receiving an annual salary of \$6,000.00 from the City of St. Louis since he took office January 1, 1950, entitled to be compensated by the said City for the balance of \$750.00 per year for those years since 1950, in which he has been paid but \$6000.00 per year?"

Section 59.010 RSMo 1949, creates the office of recorder of deeds in each county, and Section 59.220 sets the salary of recorders of deeds in counties of the first class at \$6,750 per annum.

Honorable Eugene P. Walsh

Art. VI, Section 11, Constitution of Missouri, 1945, makes the following requirement:

"Except in counties which frame, adopt and amend a charter for their own government, the compensation of all county officers shall be prescribed by law uniform in operation in each class of counties.\* \* \*"

The City of St. Louis has been given constitutional recognition as both a city and county by Art. VI, Section 31, Constitution of Mo., 1945, that section reads:

"The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law."

The legislature has by Section 48.020, RSMo 1949, established four classes of counties. That section reads:

"All counties of this state are hereby classified, for the purpose of establishing organization and powers in accordance with the provisions of section 8, article VI, Constitution of Missouri, into four classes as follows:

"Class 1. All counties now having or which may hereafter have an assessed valuation of three hundred million dollars and over shall be in the first class."

The City of St. Louis having an assessed valuation in excess of three hundred million dollars (approximately 1½ billion dollars in 1954), is therefore a county of the first class.

From the above it appears that the City of St. Louis has the dual status of a county and a city. Since the recorder of deeds is a county officer it is our conclusion that his salary may be fixed by the General Assembly, and has been so fixed at \$6,750 per annum by Section 59.220. Our conclusion is substantiated by State ex rel. Dwyer v. Nolte, 351 Mo. 271, 172 S.W.2d, 854. In that case the

Honorable Eugene P. Walsh

treasurer of the City of St. Louis brought a proceeding in mandamus to get his salary at the amount set by a statute, which was \$8,000 per annum. The city charter and a city ordinance set the treasurer's salary at \$5,000 per annum. The trial court found that the treasurer was entitled to receive the annual salary of \$8,000 and to recover back pay on that basis. The Supreme Court affirmed the judgment, saying, l.c. 856:

"That part of the charter fixing the treasurer's salary is void."

Having determined that the Recorder of Deeds is entitled to receive the annual salary of \$6,750, we turn to your question of whether he may recover the difference between the amount of salary he has received since taking office and the amount he should have received. State ex rel. Dwyer v. Nolte, supra, is sufficient authority for our holding that the Recorder may recover his unpaid salary. It is well settled law that the salary of a public officer belongs to him as an incident to his office, and when the salary is improperly withheld, he may sue for and recover it. Bates v. City of St. Louis, 153 Mo. 18, 54 S.W. 439; State ex rel. Nicolai v. Nolte, 352 Mo. 1069, 180 S.W. 2d 740.

However, the five year statute of limitations provided by Section 516.120 RSMo 1949, is available as a defense in a suit brought to collect unpaid salary which was due more than five years before bringing suit. See Gill v. Buchanan County, 346 Mo. 599, 142 S.W.2d 665; Coleman v. Kansas City, 351 Mo. 254, 173 S.W. 2d 572; Coleman v. Kansas City, 353 Mo. 150, 182 S.W. 2d. 74.

#### CONCLUSION

It is, therefore, the opinion of this office that the salary of the Recorder of Deeds of the City of St. Louis is fixed by the General Assembly at \$6,750 per annum, and that the present Recorder is entitled to receive that amount of salary which he should have received since taking office, except that portion due more than five years prior to institution of suit.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

PMcG:gmt:ld