

CIRCUIT COURTS
AND SALARIES:

Circuit Judge of the 26th Judicial Circuit not entitled to change of venue fee provided in Sec. 1074, R. S. Mo. 1939.



August 20, 1946.

Honorable O. O. Brown,
Judge, 26th Judicial Circuit,
Stockton, Missouri.

Dear Judge Brown:

This will acknowledge receipt of your request for an opinion which reads as follows:

"Under senate Bill No. 442 fixing the Judges Salary which repeals certain sections and enacting new sections in their place, after reading the bill I am somewhat confused as to whether or not the Judges salary bill will keep the Judge from receiving and retaining the \$10.00 change of venue fee allowed by section 1074. Under bill 442 it does not repeal section 1074 and makes no reference to it whatever. What is your opinion on that, can the Judge still retain the change of venue fee."

Some eight sections of the Revised Statutes of Mo., 1939, are specifically repealed by SCSSB 442. However, said bill does not specifically repeal Sec. 1073 and 1074, R. S. Mo. 1939, which requires persons filing applications for a change of venue in civil cases to deposit \$10.00 with the clerk of the circuit court, and that, if change of venue is granted, the clerk of the circuit court shall transmit with the transcript the \$10.00 deposit to the clerk of the circuit court of the county wherein the cause is sent; and which further provides that the clerk of the circuit court shall pay the \$10.00 received to the Judge of the Circuit Court, or any special judge hearing the cause, upon the final disposition of such cause.

We are familiar with that well established rule of construction - that courts do not favor repeal by implication. (See State ex rel. R. Newton McDowell, Inc. v. Smith, 67 S.W. (2d) 50, 334 Mo. 653).

However, there is another cardinal rule and that is that when two statutes dealing with the same subject matter are inconsistent with each other and cannot be harmonized, the latter act will prevail and operate as a repeal of the former statute although it contains no express repealing clause.

In Young v. Greene County, 119 S.W. (2d) 369, 342 Mo. 1105, the court said:

"* * * It seems to us they are in irreconcilable conflict. If two statutes deal with the same subject matter and are inconsistent with each other, so that both cannot be operative as to such matter, the later act will be regarded as a substitute for the earlier one and will operate as a repeal thereof, although it contains no express repealing clause, State ex rel. Mo. Pac. Ry. Co. v. Pub. Serv. Comm., 275 Mo. 60, 204 S.W. 395.* * *". (See also Vining v. Probst, 186 S.W.(2d) 611.)

From a careful examination of SCSSB 442, as passed by the 63rd General Assembly, we are convinced that there is an irreconcilable conflict between Section 1074, R.S.Mo. 1939, and said SCSSM 442.

Section 2 of said bill changes the compensation of judges in your county and provides that from and after the date said bill becomes effective, such judges shall receive an annual salary of Six Thousand Dollars (\$6000.00). Said section reads in part:

"From and after the effective date of this Act; * * * and all other judges of the circuit courts of this State shall each receive an annual salary of \$6000.00 payable by the State out of the State treasury."

Section 4 of said bill allows mileage and other expenses incident to holding court at any place in his circuit other than the place of residence, for judges whose circuits consist of more than one county.

Section 5 of said bill allows judges temporarily serving, transferred or assigned as judge of the circuit court, other than one to which he was appointed or elected, when said court is held in a circuit other than the circuit in which the judge resides, to receive from the state mileage and \$10.00 per day while so engaged. Under this provision, any special judge serving in a change of venue case is entitled to receive and shall be compensated \$10.00 per day while so engaged. However, this provision is not broad enough to give additional compensation to a regular judge sitting in a change of venue case, coming to his circuit from another circuit.

If it were not for Section 6 of SCSSM 442, we believe that Sec. 1074, R. S. Mo. 1939, would still be effective and the provision of said Sec. 1074 and SCSSB 442 could be harmonized. But Sec. 6 is in such clear and unambiguous language that there can be no question as to what the legislative intent was when passing said bill. Said section provides that all said salary and expenses herein provided shall constitute the total compensation for all duties performed by and all expenses of said judges, and does not stop at that, but continues by

saying that there shall be no further payment made to or accepted by said judges for the performance of any duties required to be performed by them under the law. Section 6 reads as follows:

"All of the said salaries and expenses herein provided shall be paid in monthly installments on the first day of each month and shall constitute the total compensation for all duties performed by, and all expenses of, said judges, and there shall be no further payment made to or accepted by said judges for the performance of any duties required to be performed by them under the law."

Furthermore, Section 7 of said bill expressly provides that all laws in conflict with the provisions hereof, pertaining to salaries, expenses or compensation of the judges mentioned are hereby repealed. However, such provision, as found in Sec. 7, supra, is not conclusive and the courts have held similar provisions do not amount to a specific repeal of other laws.

In view of Sec. 6, supra, we cannot see how there is room for any other construction than to hold that Sec. 1074 R. S. Mo. 1939, conflicts with the provisions of Sec. 6, supra, and, therefore, in view of the foregoing rules of construction, Sec. 1074, R. S. Mo. 1939, must be considered repealed by implication in so far as it conflicts with Sec. 6.

THEREFORE, it is the opinion of this department, that, under SCSSB 442, as passed by the 63rd General Assembly, judges of judicial circuits similar to yours are not entitled to change of venue fees as provided in Sec. 1074, R.S. Mo. 1939. Under said bill such judges shall receive an annual salary of \$6000.00, and that shall constitute the total compensation for said judges for all duties required to be performed by them under the law, except that said judges shall be entitled to additional mileage and fees when qualifying in such cases as provided for in Secs. 4 and 5 of SCSSB 442.

Respectfully submitted,

APPROVED:

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