

CORONER

re: Entitled to receive salaries under House Bill No. 880 from October 6, 1946.

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December 18, 1946

Honorable ~~Law~~ J. Harned  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

Receipt is acknowledged of your letter which reads:

"Will you please inform me when the coroner in counties of the third class go on salary?"

Section 1 of House Bill No. 880 incorporated in the Missouri Revised Statutes Annotated as Section 13259.4, relating to the compensation of coroners in counties of the third class provides:

"The coroner in all counties of the third class shall receive for his services annually, payable out of the county treasury in equal monthly installments the following: In counties with a population of less than 10,000 the sum of \$120.00; in counties with a population of 10,000 and less than 15,000, the sum of \$180.00; in counties with a population of 15,000 and less than 20,000, the sum of \$240.00; in counties with a population of 20,000 and less than 24,000 the sum of \$360.00; in counties with a population of 24,000 and less than 30,000 the sum of \$480.00; and in counties having a population of 30,000 and more the sum of \$600.00."

House Bill No. 880 was truly agreed to and finally passed prior to July 8, 1946, and was subsequently approved by the Governor. The General Assembly recessed July 8, 1946, until twelve o'clock August 7, 1946. Before recessing they passed a joint resolution under the terms of which all laws passed by the General Assembly on or before July 8, 1946, and not effective by special provision, shall take effect ninety days from and after

the beginning of such recess. This was in consonance with Section 29, Article III of the Constitution which, in part, reads:

"\* \* \*provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess."

Therefore, House Bill No. 880 became effective October 6, 1946.

Prior to the passage of House Bill No. 880, supra, coroners in the various counties of this state were compensated by fees collected under Section 13424, R. S. Mo. 1939.

Section 2 of House Bill 880 requires the coroner in third class counties to collect the fees accruing to his office by law, and at the end of each month file with the county court a report of all fees charged and collected during said month. Upon the filing of such report the coroner must forthwith pay to the county treasurer the fees collected.

Therefore, the effect of House Bill No. 880 is to change the manner of compensating coroners in third class counties from fees to salaries.

Section 13, Article VII of the Constitution, in part, provides:

"The compensation of state, county and municipal officers shall not be increased during the term of office, \* \* \*"

The appellate courts of Missouri have not ruled on the status of a coroner other than holding he is a "constitutional officer" but other jurisdictions have held that the office of "coroner" is a county office, and that the coroner is a county officer. *People v. Horan*, 86 Pac. 252, 34 Colo. 304; *People v. Warner*, 104 N.Y.S. 279; *Abbott v. Adams County*, 214 Ill. App. 201.

If the salaries that coroners of third class counties are to receive under House Bill No. 880 would constitute an increase in compensation during their present terms of office, said bill would not be applicable to such officers until the beginning of their next ensuing terms. If the salaries so provided do not constitute an increase in compensation during their present terms of office then such officers would be entitled to receive their salaries as of the effective date of said bill.

The question then arises that if the salaries now provided for by House Bill 880 exceed the fees that the coroners have heretofore actually collected and retained as compensation, would it constitute an increase in their compensation during their present terms of office?

The maximum amount of fees that could be retained by coroners in what are now third class counties was fixed by Section 13450, R. S. Mo. 1939 which provides:

"Fees paid to certain officers not to exceed what

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants or more. After the first day of January, 1891, every such officer shall make return quarterly to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit; and for any statement or omission in such return contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

In the case of State ex rel. Emmons v. Farmer, 196 S. W. 1106, 271 Mo. 306, the validity of an act was questioned which provided that clerks of the circuit courts were to receive an annual salary of \$2,000.00 in lieu of all fees collected. It was contended that said act violated Section 8, Article XIV, of the Constitution of 1875, which is essentially the same as Section 13, Article VII, of our present Constitution, because the salary exceeded the amount of fees which had actually been earned and collected in previous years. There was also an earlier statute which had limited the fees such officers were allowed to retain to \$2,000.00 per annum. The court said the following at l. c. 314, 316 and 317:

"While defendants concede that the amount of cash salary relator is entitled to receive under the provisions of the Act of 1915, does not exceed but exactly equals the amount he was entitled to retain under the act of 1913, out of his fees collected, yet they contend that unless the fees which he actually earned and collected amount each year to a sum equal to the \$2000 yearly

cash salary, the provisions of the Act of 1915 are unconstitutional, for that they in fact bring about an increase in his compensation during the currency of a given term.

\* \* \* \* \*

"The Act of 1915 putting circuit clerks upon a salary basis, was, it is plain, designedly enacted so that the several salaries fixed thereby and made payable monthly in cash should exactly equal the amounts fixed by statute in 1913, as the amounts which could be retained by each circuit clerk as his annual compensation out of the fees he earned. As we gather the position and contention of defendants, they concede that in all cases and counties wherein the fees actually earned by the several circuit clerks amount in any one year to the sum fixed as their salaries by the Act of 1915, the act is constitutional. At least, if defendants do not concede this, the logic of their contention concedes it for them. The result of such a construction is that some circuit clerks in some counties which contain from twenty-five to thirty thousand population would get the salary fixed by the Act of 1915 some years, and get fees other years, and it would be impossible ever to tell what method of payment should be employed, or how much compensation the circuit clerk was to get till the end of the year. Likewise in some of the counties these officers would be paid salaries and in others still remain upon a fee basis of compensation. Such results could not have been in legislative contemplation; since two cardinal canons of construction upon the attack of unconstitutionality confront us: One of these is that we must be convinced beyond a reasonable doubt that an act is void under the Constitution before we are warranted in so declaring it (State v. Baskowitz, 250 Mo. 82); the other is that where one construction of a statute would render the act absurd and unenforceable and the other the converse, we are required to adopt the latter rather than the former.

(State ex rel. v. Gordon, 266 Mo. 1.c. 411.)

\* \* \* \* \*

"We are constrained therefore to hold that the Act of 1913 (Laws 1913, p. 702) fixed the basic compensation for clerks of the circuit courts and that the amounts severally set forth in that act as the sums in fees which such clerks could each retain as their several compensations, constitute the salaries from which we are to determine whether the Act of 1915 increases such compensation. We have seen that the amounts are the same in counties of the class here in question and conclude that as to the relator there has been no increase and the act is constitutional. Let the judgment of the learned judge nisi be affirmed."

Under the decision of the above case, which we believe is controlling, if the annual salary provided for under the new law does not exceed the maximum amount of fees which could be retained each year, when coroners were compensated by fees, there is no increase in compensation.

In the case at bar Section 13450, supra, allowed coroners an annual retention of fees up to and including \$5,000.00 and the annual salaries provided for in Section 1 of House Bill No. 880, supra, do not even equal that amount, consequently there is no increase in compensation of coroners of third class counties during their present terms of office.

CONCLUSION

Therefore, it is the opinion of this department that coroners in counties of the third class are entitled to receive the salaries provided for in Section 1, House Bill No. 880 as of October 6, 1946, the effective date of said bill.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

RFT:mw