

PROSECUTING ATTORNEYS:  
SALARY INCREASE:  
SENATE BILL NO. 198 :

Prosecuting attorneys in third and fourth class counties are not entitled to receive the additional compensation provided by Senate Bill No. 198, enacted by the 69th General Assembly, during their present terms of office.

FILED

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August 15, 1957

Honorable William G. Johnson  
Prosecuting Attorney , Morgan County  
Versailles, Missouri

Dear Mr. Johnson:

Your recent request for an official opinion reads:

"The County Court of Morgan County has requested that I receive an opinion from you as to the effective date of the additional compensation provided for Prosecuting Attorneys in counties of the third class as provided for in Senate Bill No. 198, passed by the 69th General Assembly. I have a letter dated July 8th from the office of Haskell Holman, State Auditor, which says Senate Bill No. 198 will become effective August 29, 1957."

Senate Bill No. 198, enacted by the 69th General Assembly, which bill becomes effective August 29, 1957, reads:

"Section 1. The prosecuting attorney in counties of the third and fourth classes, in addition to the compensation provided in sections 56.280 and 56.290, 56.300, and 56.305, RSMo, shall receive eight hundred dollars in 3rd class counties and six hundred dollars in 4th class counties per year, as compensation for the additional services performed by him in relation to aid to dependent children as provided in section 208.040 RSMo."

Section 13 of Article VII of the Missouri Constitution, 1945, reads:

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"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."

In the case of Little River Drainage Dist. v. Lassater, 29 SW2d 716, at l.c. 719, the Missouri Supreme Court stated:

"The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices, and has no application to additional duties imposed upon such officers not ordinarily incident to their offices. \* \* \*"

It will be noted that the compensation provided by Senate Bill No. 198, enacted by the 69th General Assembly, is for "the additional services performed by him (the prosecuting attorney) in relation to aid to dependent children as provided in Section 208.040 RSMo."

That portion of the law (§208.040, RSMo, Cum. Supp. 1955) under consideration here, which relates to the duties of the prosecuting attorney, reads:

" \* \* \* When any report is made to the prosecuting attorney of the desertion or nonsupport of a child for whom benefits are claimed, and the whereabouts of the deserting or defaulting parent is known, or can be ascertained, it shall be the duty of the prosecuting attorney to fully investigate all the facts concerning the desertion or nonsupport and institute such action as he deems necessary to secure support for such child. If the prosecuting attorney determines for any reason that an action should not be instituted, a report of his findings and the reason an action would not be instituted shall be made to the Division of Welfare.  
\* \* \*"

Therefore, all of the prosecuting attorneys who are in office on August 29, 1957, the effective date of Senate Bill No. 198, had had imposed upon them at the time they took office the duties set forth above enacted by House Bill No. 107 in 1955.

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The 69th General Assembly repealed Section 208.040, Laws of 1955, and re-enacted the section which is now Section 208.040 of House Bill No. 69, which becomes effective on August 29, 1957. That portion of the bill which relates to the duties of the prosecuting attorney reads:

" \* \* \* When any report is made to the prosecuting attorney of the desertion or nonsupport of a child for whom benefits are claimed, and the whereabouts of the deserting or defaulting parent is known, or can be ascertained, it shall be the duty of the prosecuting attorney to fully investigate all the facts concerning the desertion or nonsupport and institute such action as he deems necessary to secure support for such child. If the prosecuting attorney determines for any reason that an action should not be instituted, a report of his findings and the reason an action was not instituted shall be made to the Division of Welfare. \* \* \*"

It will be noted that the duties imposed upon the prosecuting attorney by the laws of 1955 are precisely the same as the duties imposed by House Bill No. 69 of the 69th General Assembly, which bill becomes effective August 29, 1957. Therefore, the compensation which is provided by Senate Bill No. 198 is for duties which were already imposed upon the prosecuting attorneys of the state at the time they assumed office, as we pointed out above, and the repeal and re-enactment of Section 208.040 did not add a single duty or impose a single additional act or responsibility upon prosecuting attorneys.

At this point we would call attention to Section 1.120, RSMo 1949, which reads:

"The provisions of any law or statute which is re-enacted, amended or revised, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments."

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The law of 1955 embraced children under the age of sixteen years. House Bill No. 69, enacted by the 69th General Assembly, embraces children under the age of eighteen years, thus somewhat increasing the potential individual cases with which the prosecutor may have to deal. But, as we have previously stated, the duties of the prosecuting attorney under the latter bill, are precisely what they were in 1955. The fact that these same duties are set forth in a new bill enacted subsequent to 1955 does not make them new duties. We do not believe that this possibility of an increase in duties in this area would affect the situation insofar as the instant question is concerned. Any increase in the population of a county constitutes a potential increase in the duties of the prosecuting attorney, but it would not by reason of that fact be argued that his compensation should be increased.

Certainly, the changing of the age limit from sixteen to eighteen years would not impose on the prosecuting attorneys additional duties which were not incident to their offices as of the date they assumed their present terms of office.

#### CONCLUSION

It is the opinion of this department that prosecuting attorneys in third and fourth class counties are not entitled to receive the additional compensation provided by Senate Bill No. 198, enacted by the 69th General Assembly, during their present terms of office.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

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