

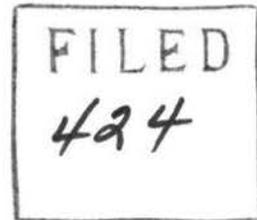
PENSIONS:  
PROBATE JUDGES:  
MAGISTRATES:  
COMPENSATION:

The compensation of a retired probate judge ex-officio magistrate of a county whose population by the 1970 decennial census has increased to over 30,000 inhabitants, who has

been appointed a special commissioner or referee under the provisions of Sections 476.450, RSMo 1969 et seq., is one-third of the salary provided for the office of probate judge of such county as of July 1, 1971.

OPINION NO. 424

October 13, 1971



Mr. John C. Vaughn  
Comptroller and Budget Director  
State of Missouri  
Post Office Box 809  
Jefferson City, Missouri 65101

Dear Mr. Vaughn:

This opinion is in answer to your question which is stated as follows:

"Should a retired Probate and Ex-Officio [Magistrate] Judge from a County of under 30,000 population be paid on the basis of a Probate or Magistrate Judge when the official census shows a population in excess of 30,000?"

You add the factual information that:

"Cass County was a County of under 30,000 as shown by the 1960 census, therefore, the elected Probate Judge acted as Ex-Officio Magistrate Judge. A Judge whose termination as Probate Judge and Ex-Officio Magistrate was December 31, 1962 and meeting all of the other requirements, retired as of March 1, 1970 under the provisions of Sections 476.450 and 476.456 RSMo. The official census of 1970 reflected that Cass County had

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a population in excess of 30,000 and therefore were entitled to a separate office of Probate Judge and Magistrate Judge."

Under Section 476.500, RSMo 1969, a probate judge meeting the eligibility requirements of Sections 476.450, RSMo 1969 et seq., may elect to serve as a special commissioner and be subject to call by the Supreme Court of Missouri for temporary duty as provided in Section 476.460, RSMo 1969.

Section 476.450 provides in part that such a judge appointed special commissioner or referee shall:

". . . while he remains a resident of Missouri, be entitled to and shall receive as annual compensation, salary or retirement compensation during the remainder of his life a sum equal in amount to one-third the salary or compensation then or thereafter provided for by law for the office from which he has retired, and said sum shall be payable monthly out of the general revenue of the state of Missouri."

Probate judges who are ex-officio magistrates receive compensation in accordance with the classifications set out in Section 482.150, RSMo 1969 since their compensation as magistrate includes their compensation as probate judge. Id., Subsection 2. Probate judges who are not also ex-officio magistrates receive the compensation provided, by classification, under the provisions of Section 481.200, RSMo 1969.

As you have noted the 1970 decennial census determined that Cass County has a population in excess of 30,000 inhabitants whereas under the 1960 census the population was less than 30,000 inhabitants. Prior to July 1, 1971, the probate judge of Cass County was also ex-officio magistrate and as such received a salary of \$12,400 whereas subsequent to that date the probate judge is no longer "judge of the magistrate court" and presently receives a salary of \$13,000. State ex rel. Stark v. Jeter, 467 S.W.2d 882 (Mo. 1971).

The question is therefore whether such a retired probate judge has his salary determined by the statutory classification that applied to him when he retired from the office of probate judge ex-officio magistrate, subject to any increase or decrease that might be forthcoming by reason of a statutory change within the classification, or, whether such a probate judge is entitled to receive, as of July 1, 1971, one-third of the salary now provided in the statutory classification for the office of probate judge of that county.

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In answer, we note that the so called "retirement system" which is provided for such judges, Sections 476.450 et seq., is not a true retirement system but is instead a plan for the compensation of certain judges who are eligible and willing to serve as special commissioners or referees. It is clear that the legislature provided for such salary classifications in order to allow automatic salary increases or decreases to incumbent judges to compensate for changes in the workload of the office. While such special commissioners are not incumbents of the office they are nonetheless subject to duty by order of the Supreme Court and although that duty may be in any court of this state it is reasonable to assume that such service would have some relationship to the office which was vacated.

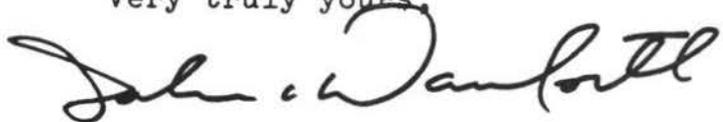
It is therefore our view that such a judge retired from the office of probate judge is entitled to have his compensation as special commissioner determined on the basis of the compensation now or hereafter provided for the office of probate judge according to population or assessed valuation.

#### CONCLUSION

It is the opinion of this office that the compensation of a retired probate judge ex-officio magistrate of a county whose population by the 1970 decennial census has increased to over 30,000 inhabitants, who has been appointed a special commissioner or referee under the provisions of Sections 476.450 RSMo 1969 et seq., is one-third of the salary provided for the office of probate judge of such county as of July 1, 1971.

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH  
Attorney General