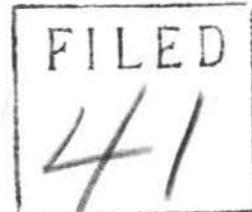


OFFICERS: County Officers not entitled to salary increase during the official term pursuant to the new legislation purporting to increase salaries.

~~November 1, 1937.~~

Honorable Maurice Hoffman  
Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri



Dear Sir:

We acknowledge your request for an opinion dated September 28, 1937, reading as follows:

"The recent session of the Missouri Legislature provided for an increase in salary of the County Auditor and County Clerk of Buchanan County.

"The County Court desires to know whether it is legal to pay such increased salaries effective at once or whether such increases take effect only after the beginning of the next terms in said offices.

"I respectfully request an opinion from your office with respect to the immediate payment of such salary increases."

On September 27, 1937, Wm Orr Sawyers, Assistant Attorney General rendered to S. J. Shepherd an unofficial opinion which omitted to take into consideration the constitutionality of an Act of the Legislature increasing salaries during the term of a public office.

Laws of Missouri, 1937, p. 421, Section 12295, provide:

"The county auditor shall be paid a salary of thirty-six hundred dollars per annum, payable monthly out of the general revenue fund of the county, by warrants drawn upon the county treasurer therefor."

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Article XIV, Section 8 of the Missouri Constitution provides:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In the case of *Folk v. City of St. Louis*, 157 S. W. 71, 250 Mo. 116, 134, the Legislature had raised the salary of the Circuit Attorney of St. Louis, and the incumbent was claiming the salary increase. The Court, after calling attention to the Constitution as above quoted, then said:

"The object of section 9, article 14, Constitution of Missouri, prohibiting an increase of compensation or fees of certain officers during their terms, is apparent. When any popular individual is elected to a public office his influence with the legislative department of the State is likely to be very great, and, consequently, the General Assembly may be easily persuaded that the compensation of the aforesaid popular individual is too small, and at his suggestion, increase his salary or other compensation to an unreasonable extent. This is particularly true where the popular individual is elected to an office which enables him to reward his friends with official patronage or other official favors.

"It was to prevent persons while possessed of the prestige and influence of official power from using that power for their own advantage

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that the framers of our organic law ordained that salaries of public officers should not be increased during the terms of the persons holding such offices."

This case is identical with the first problem presented in your request.

We call your attention to the law in force at the passage of the 1937 County Auditor Act, which is found in Section 12205, R. S. Mo. 1929, and provides a \$2400.00 annual salary to the County Auditor.

Buchanan County, at the last census, had a population of 98,633 persons.

Laws of Missouri, 1937, p. 441, Section 11811, provide in part:

"The clerks of the county courts of this State and their deputies and assistants shall receive for their services annually, to be paid out of the county treasury in monthly installments at the end of each month by warrant drawn by the county court upon the county treasury, the following sums: \* \* \* \* in counties having a population of 90,000 and less than 200,000 persons the sum of \$3,600.00 for themselves\* \* \* \*."

We call your attention to the general State law in force at the passage of the 1937 County Clerk's Act, which is found in Laws of 1933, p. 370 Section 11811. The law in force at the passage of the 1937 County Clerk Act did not provide for payment of such salary out of the county treasury, as does the 1937 Act, and further we note that under the prior law the County Clerk's salary was fixed and limited, not to exceed a retainer of collected fees, for his official services, in the amount of \$3,000.00 annually, Buchanan County falling in the

classification of counties having a population of 70,000, and less than 200,000 persons.

In the 1937 County Clerk Law, supra, there has been a legislative transition whereby the Clerk of the County Court of Buchanan County now purports to serve under a general State law under which the fixed salary for official services is set at \$3,600 annually, Buchanan County falling within a classification of counties having a population of 90,000 and less than 200,000 persons. This 1937 general classification of counties for fixing salaries in Buchanan County is entirely a new law, said classification not being present in the 1933 law.

The question arises, where, prior to the beginning of the term of office of a county clerk the Statute fixes the salary at a certain annual sum, if serving in counties of a certain population, and then during the clerk's term of office the Legislature passes a new and different law abolishing the old classification and setting up a new classification for fixing salaries, which change in the law creates a legislative transition of counties so that county clerks serving in counties of a greater population than under the former classification having fixed annual salaries at a certain larger sum than that fixed for such counties under the old law, thereby increasing the annual salary of the county clerk \$600.00, under such circumstances is the legislative increase in salary in violation of Article XIV, Section 8 of the Missouri Constitution?

In the case of State v. Hamilton, 260 S. W. 466, 303 Mo. 302, 315, the Court laid down the rule in those cases where a county passes from one classification to another, by reason of a growth in population:

"The mere fact that a county passed from one class to the other does not deprive the holder of the office of the salary fixed by law, and fixed, too, at a time long prior to relator's election. It is our judgment Section 8 of Article 14 of the Constitution does not preclude a recovery by relator. This is because his salary was fixed by law before his election, and no law since enacted has changed it, except as we may hereafter note."

Hon. M. Hoffman

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This department is of the opinion that the County Court of Buchanan County should abide by the constitutional limitations in computing and paying salaries of County officers, and we are of the further opinion that under the facts stated in your request, any construction of Section 12205, supra, or 11811, supra, by the County Court, while computing and issuing salary warrants against the County Treasury, to the County Auditor, or the County Clerk, to the effect that during their present terms of office either is to be considered by them as entitled to the purported salary increase shown by the 1937 Legislation, supra, would be illegal and unwarranted construction of the statutes in the light of the constitutional prohibition relating to increasing salary during a term of office.

This department is of the opinion that the County Auditor and County Clerk of Buchanan County are not entitled to any salary increase during their present term of office, pursuant to the 1937 legislation above quoted.

Respectfully submitted

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General.

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