

COUNTY DEPUTY CIRCUIT CLERK: Circuit Judge, or Judges, may
SALARY: increase the compensation of
deputy circuit clerk.

January 13, 1944



1-18
Honorable Allen Rolston
Prosecuting Attorney
Schuyler County
Lancaster, Missouri

Dear Sir:

This will acknowledge receipt of your letter of December 9, 1943, requesting an opinion from this Department, which reads as follows:

"Mrs. Maudie Kirby is Deputy Clerk of the Circuit Court of Schuyler county. Her salary was fixed at \$75.00 per month at the time of her appointment, and by order of Judge Higbee. All apparently in strict compliance with the provisions of Sec. 13434, R. S. 1939.

"Since then the duties of this clerk have greatly increased, and she is asking a raise in salary. The question is whether or not the judge of circuit court, presumably while court is in session, can make a valid order increasing her salary to properly reimburse her for the extra work she now has to do. I will very much appreciate an opinion from you on this question."

It is a well recognized law in this state that a public officer has no vested interest in his office or in the compensation provided therefor.

As was stated in Sanderson v. Pike County, 195 Mo. 598, l. c. 605:

"* * * It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it. * * * * *

"Such compensation is not the creature of contract nor dependent upon the fact, or value of services actually rendered * * * and cannot be recovered upon quantum meruit. * * *"

Under Section 11812, page 371 Laws of Missouri 1933, the county court was authorized to fix the salary of such deputy clerk and the Act specifically provided that the county court may at any time modify or rescind its order permitting any appointment to be made, and specifically provided that the county court may reduce the compensation theretofore fixed by it. Under such a provision it is quite apparent that the compensation of such deputy, or deputies, could be reduced but not increased, since the Act specifically provided for a reduction and was silent as to any increased compensation. Subsequent thereto the Fifty-ninth General Assembly repealed the above provision and enacted in lieu thereof Section 11812, page 446, Laws of Missouri 1937, now known as Section 13434, R. S. Mo. 1939, authorizing the circuit clerk to appoint a deputy, or deputies, with the approval of the judge or judges of the circuit court, as the judge or judges shall deem necessary, and further provides that the circuit judge, or judges shall fix the compensation of such deputy, or deputies; which order shall specify the period of employment. Said section further grants to the circuit court or courts, the power to modify or rescind its order permitting an appointment to be made. Said section reads as follows:

"Every clerk of a circuit court shall be entitled to such number of deputies

and assistants to be appointed by such official, with the approval of the judge or judges of the circuit courts, as such judge or judges shall deem necessary for the prompt and proper discharge of the duties of his office. The judge or judges of the circuit court, in its order permitting the clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which said order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the circuit court may, at any time, modify or rescind its order permitting an appointment to be made."

In reading the above provision we find that it no longer specifically provides for a reduction in compensation of the deputy or deputies.

Corpus Juris lays down a general rule of law under certain conditions, and, in Vol. 46, Sec.253, page 1020, says:

"* * * An officer's compensation, established by statute, cannot be increased or diminished by an executive officer or board, although such executive or board is the appointing power, and a statute delegating to a board the power to fix salaries within certain limits contemplates that the salary shall be so fixed at the commencement of the term and shall not be thereafter changed."

However, the foregoing rule refers to compensation established by statute and also such salary that is fixed within certain

limits and that shall be fixed at the commencement of the term. The question now is, is there a specific term of office.

Section 8, Article XIV of the Constitution of Missouri, prohibits the compensation of any county officer from being increased during his term of office, and reads as follows:

"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 construing the above provision the Supreme Court of Missouri, in *State ex rel. v. Gordon*, 238 Mo. 168, 1. c. 180, held that an Adjutant General who, under the law, shall be appointed by the Governor, and shall hold office during the term of the Governor, and may be removed at his pleasure, does not have any term of office in the sense that the phrase is used in the Constitution. In so holding the court said:

"Recognizing the precision of definition judicially indulged in the exposition of the constitutional provision now up, as already indicated, we now come to a closer view of the case and to the application of the doctrines announced to the facts in judgment. The final question is: Considering the terms of the law of 1905 under which relator was appointed, does he have a 'term of office' in a constitutional sense? Clearly no. The statute provides that the Adjutant-General shall be appointed by the Governor, that he shall be military secretary to the Governor and that he 'shall hold office during the term of the Governor and may be removed by him at his pleasure.' If the statute had said he should hold office 'during the term of the Governor' and had broken off at that point we would have a different case to deal with. In such case

his term would have the same boundaries as the Governor's term. By referring to this certainty, the term of the Adjutant-General would be made certain and the maxim, id certum est, would control the situation. But the law does not break off there and neither should we in the exposition of it. It goes on to say in the same breath that the Governor may remove him at 'his pleasure.' The Governor's breath, under the law, made him, and the Governor's breath is left to unmake him. The appointing power has left to it the disappointing power unchecked, free of limit in time, place or circumstance. No man who holds office at the pleasure of another can be said to have a certain fixed term of office. The two ideas are radically antagonistic and in right reason they cannot both apply at the same time to the same thing. The Governor's 'pleasure' has no fixed bounds discernible to the judicial eye.

"It seems to us that the cited authorities directly apply to the situation thus presented; for the sum of the matter is that any one that holds office at the pleasure of the appointing power has no 'term of office' in the sense that phrase is used in the Constitution. This view of it does not make the words 'hold office during the term of the Governor' perish by construction. Those words are still left as a legislative direction that in any and all events the military secretary of the Governor shall step down and out with the Governor himself. The Governor is the commander in chief of the National Guard by virtue of his office, and when he lays down his official sword his military secretary must lay down his official pen. The construction given but makes the whole law alive by giving some sensible office to all its words.

"Hitherto, we take it, such has been the administrative policy in dealing with a legislative increase of salary where the officer interested holds his office during the pleasure of the appointing power.

"Let us put one case as an example. The statute authorizes us to appoint a librarian. The condition is such that he holds under our pleasure. Twice during the present librarian's official life his salary has been increased by the General Assembly, once from nine to twelve hundred dollars (Laws 1905, p. 304), and again from twelve to fifteen hundred dollars (Laws 1907, p. 355). In each instance he has been allowed to take, as was right, his increased salary.

"Our learned Attorney-General makes an ingenious argument against such construction. As we grasp it his contention is that relator's term of office has a fixed and definite tenure, to-wit, that of the Governor, and that the removal part of the statute brings into view a new and independent matter, viz., the power of removal which may be exercised at pleasure. But we do not think a fair construction of the law allows it to be taken apart and then joined together so as to make of it two independent provisions. The clause in hand is inseparable, relates to the same subject-matter and what the Legislature hath joined together we ought not put asunder. Our conclusion is an absolute writ of mandamus should go on the return of respondent."

It has even been held that when a power of appointment is conferred and no term is fixed by law, then the appointee may be removed at pleasure by the appointing authority, even without notice. See *State v. Hedrick*, 241 S. W. 402, 1. c. 416.

CONCLUSION

It is, therefore, the opinion of this Department that since the Deputy Circuit Clerk does not have any term of

office, as contemplated in Section 8, Article XIV of the Constitution, supra, and since the Circuit Court may modify or rescind the appointment at will, the Circuit Court is not inhibited from increasing the compensation of the Deputy Circuit Clerk.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
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