

OFFICERS: Deputy sheriffs appointed by the sheriff in counties of third class under authority of Sec. 2, Laws of 1945, p. 1562, do not have a "term of office" and compensation of such deputies may be changed at any time by the circuit judge.

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January 14, 1948

Honorable Leo J. Harned
Prosecuting Attorney
Pettis County
Sedalia, Missouri



Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"As you know, the deputy sheriffs at the present time are upon a salary basis, the salary being fixed by the Circuit Judge. This is in accordance with the laws enacted in 1945. We have, here in this county, a deputy sheriff who has been appointed for a term which expires January 1, 1949. He is desirous of an increase in his salary, to meet higher living costs.

"The question has arisen whether, under the present Constitution, he can legally receive an increase of salary during his present term. Article 7, Section 13, of the present Constitution, provides 'compensation that state, county, and municipal officers shall not be increased during the term of office'. The Supreme Court, as you know, in Case of State Ex Re vs. Bus, 135 Mo. 325, has held that the deputy sheriffs appointed by the sheriffs, with approval of the Court, under the Statutes, as they then stood, are public officers. Also, that they possess all the powers to perform any of the duties prescribed by law, to be performed by the sheriff, and his powers and duties are equal to those of the sheriff himself; that the deputy sheriff is a public officer, under the laws of this State, and his powers are equal with that of the sheriff.

"In view of the Constitutional provision, and the decision which is cited, there is a question in my mind whether or not this deputy sheriff can legally have his salary increased during the year 1948.

"I would very much appreciate an opinion from your department upon this question."

We presume that the deputy sheriff referred to in your letter is one appointed by virtue of Section 2, Laws of Missouri, 1945, page 1562, providing for the appointment of deputies by the sheriff of a third class county, providing that the judge of the circuit court shall determine the number and compensation of such deputies and that the judge shall annually, and oftener if necessary, review his order fixing the number and compensation, and that the sheriff may at any time discharge such deputies. It is our opinion that the provision in such section that the sheriff may at any time discharge any deputy is equivalent to stating that the deputy serves at the pleasure of the appointing power.

We are enclosing a copy of an official opinion of this department rendered to B. H. Howard under date of August 16, 1947, in which this department held that an officer who serves at the pleasure of the appointing power does not have a "term of office," and that the constitutional prohibition against increasing an officer's salary during his term of office does not apply to such an officer.

We are further persuaded to the view that such deputy sheriff does not have a "term of office" and that the constitutional prohibition against increasing an officer's salary during his term of office does not apply to a deputy sheriff in a county of the third class, since Section 2, laws of Missouri, 1945, page 1562, provides that the circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies. Since the circuit judge may review his order both as to the number and compensation as often as necessary, it is obvious that he may change either the number or the compensation of such deputies when he sees fit.

You state that the deputy has been appointed for the term which expires January 1, 1949, but, in view of the foregoing, it is our opinion that he could not have been appointed for such a term and that the constitutional prohibition against increases in salary does not apply to such an officer.

Honorable Leo J. Harned

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CONCLUSION

It is the opinion of this department that a deputy sheriff appointed by a sheriff of a third class county under the provisions of Section 2, Laws of Missouri, 1945, page 1562, does not have a "term of office," and that the compensation of such deputy may be changed at any time by the circuit judge.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General