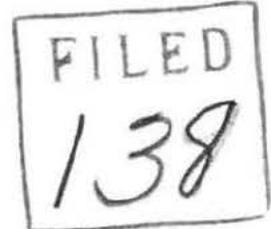


May 7, 1964



Honorable Maurice Schechter  
State Senator, 13th District  
41 Country Fair Lane  
Creve Coeur 41, Missouri

Dear Senator Schechter:

Your opinion request of March 17, 1964, reads as follows:

"On March 4th you rendered an opinion requested by me regarding salary payments to Marshall - Collectors in 4th class cities.

"Your opinion does not answer the question involved and probably caused by my original query.

"An election will be held on April 7, 1964 and the Ordinance increasing the salaries was passed prior to such date and the Ordinance provides that "these provisions shall be applicable to the Collector - Marshall - Chief of Police following the general municipal election in April 1964".

"In my letter of February 11th, I set out the starting salaries scale and the various increases after service up to 66 months and please bear in mind the elective office is only for a period of 2 years but if the elected official is elected and re-elected and holds his office for 66 months, he would be receiving top salary.

"This Ordinance was enacted by the City of Overland and I believe that one other city in St. Louis County has the same type Ordinance and there is a question as to whether the same is in violation of Section 79.270.

"May I please have your opinion on this matter at your earliest convenience."

We have been unable to find any Missouri cases which are applicable to the specific question which you have submitted. We have also consulted several texts on municipal corporations, including Corpus Juris Secundum, American Jurisprudence, McQuillin on Municipal Corporations and Rhyne on Municipal Corporations, with the same result. We have also contacted the Missouri Municipal League and the National Institute of Municipal Law Officers in Washington, D.C., and they have been unable to supply us with any citation of legal authority applicable to the question which you have submitted.

Section 13 of Article VII of the Missouri Constitution provides as follows:

"Limitation on increase of compensation and extension of terms of office.-- 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."

Section 79.270, RSMo 1959, which is applicable to fourth class cities, provides as follows:

"Salaries fixed by ordinance.-- The board of aldermen shall have power to fix the compensation of all the officers and employees of the city, by ordinance. But the salary of an officer shall not be changed during the time for which he was elected or appointed."

It may be reasonable to assert that the above prohibitions are directed against a change of salary during the term of the officer and do not prohibit a change by operation of law where the applicable law and ordinance was enacted prior to the election of the officer. In support of this argument, municipal cases have held that a change in salary caused by population changes or change in classification of a city, would not be prohibited. This was the conclusion reached in the case of State ex rel. Harvey v. Linville et al., 300 SW 1066, wherein the court held that where the compensation of an officer depends on population and automatically increases with an increase in the population, then prohibition against a change in salary during the term would be inapplicable.

On the other hand, it must be conceded that the above quoted constitutional provision does prohibit an increase during the term of office. In the case of *State v. Jost*, 191 SW 38, it was held, generally, that a police officer's salary could not be changed during his term of office; however, the facts in that case were in several respects different than the facts which you have submitted. In the present instance we have an elective office with a two year term. Each term is separate and distinct from any prior term which may have been served by the victorious candidate. It may be reasonably argued that the amount of compensation payable to an officer who is elected at a particular election should not be dependent on whether Candidate A (the incumbent) or Candidate B, was the winner of the election. It may be that to discriminate under these circumstances as to the amount of compensation payable with respect to a particular officer on the ground that one candidate had heretofore been elected to the office and the other had not, would be contrary to public policy. In other words, it may be said that the salary for a particular office should be the same irrespective of the identity of the individual who may be elected to the office.

In summary, the question which you submit appears to be one of first impression and we have been unable to find any satisfactory authority on which to base an answer. Therefore, we recommend that the validity of this ordinance be tested by a declaratory judgment suit.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General