

OFFICERS: Board of Election Commissioners of
ELECTION COMMISSIONERS: Jackson County not entitled to increase
in salary under House Bill 398(Section
113.690) during their present term.

OPINION NO. 453

December 28, 1967



Honorable Wm. F. (Bill) Moore
State Representative
Third District - Jackson County
4320 Bell
Kansas City, Missouri 64111

Dear Representative Moore:

On November 21, 1967, at suggestion of the Jackson County Board of Election Commissioners, you submitted a request for an official opinion from this office as follows:

"On October 13, 1967, House Bill #398 became effective. This bill includes salary adjustments for the employees and a raise from \$3,600 to the \$5,200 for each of the board members of the Jackson County Election Board. The board members terms expired in April, 1970.

"Attached herewith are copies of letters from the Jackson County Court, the funding institution, indicating that the funds are available to pay the necessary increases.

"We are therefore requesting an opinion as the propriety of accepting the increase as approved by the 1967 Legislature, during our present term of office as board members.

"We would direct your attention to House Bill #111, which requires substantial additional duties upon the board members to take the registration to the individual homes and to additional places as requested by citizens other than the Election Board Office. We thank you for your assistance."

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In substance, the question submitted is whether the increase in compensation provided for in House Bill 398, 74th General Assembly, to the Members of the Jackson County Board of Election Commissioners, is due them during the present term of office.

House Bill 398, repeals Section 118.120, 113.620 and 113.690, RSMo 1959, and by amendment reenacted three new sections to be known by the same section numbers. Only Sections 113.620 and 113.690, apply to Jackson County.

The only change made in Section 113.620, by amendment, was the increase in compensation of two clerks that have charge of establishing precincts and voting places and other duties provided in such statute. This section is not material to the question at issue.

Section 113.690, as amended, increases the salary of each member of the board of election commissioners from \$3,600 to \$5,200 per year. It also increases the compensation to be paid the clerks and other employees appointed by the board. However, the increase of compensation to the clerks is not material to the question now under consideration. This statute does not provide that the increase in compensation is to provide additional compensation for additional duties imposed.

Section 113.670, which applies to Jackson County, was repealed and reenacted by House Bill No. 111, 74th General Assembly. The only change made in this section was as follows:

"6. Upon receipt of written requests from applicants who are otherwise entitled to vote but who are physically incapacitated and unable to go to places of registration, the board shall send two registration officers to the homes of such applicants. The registration officers must be of opposite political parties. The validity of each request shall be determined by the board. The board may establish rules and regulations as it may deem necessary in order to give effect to this section."

Under this amendment, when a voter wants to register and is physically incapacitated and unable to go to the regular place of registration, the board of election commissioners is to send two registration clerks to his home to accept his registration.

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Section 113.550 RSMo, which applies to Jackson County, provides for a board of election commissioners of four members to be appointed by the governor with the advice and consent of the senate, who shall hold their office for a term of four years and until their successors are commissioned and qualified.

The Members of the Board of Election Commissioners of Jackson County are public officers. *Mooney v. County of St. Louis*, infra.

Article VII, Section 13 of the Missouri Constitution provides:

"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."

In *Mooney v. County of St. Louis*, 286 S.W.2d 763, the question before the court was the effect of the statute increasing the compensation of Members of the Board of Election Commissioners of the County of St. Louis. In holding they were not entitled to the increase in compensation during the term of office, the court stated, l.c. 766:

"[4] There can be no doubt but that the legislature may award extra compensation to an incumbent for the performance of certain newly imposed duties without violating the constitutional inhibition under consideration. *State ex rel. McGrath v. Walker*, 97 Mo. 162, 10 S.W. 473; *State ex rel. Harvey v. Sheehan*, 269 Mo. 421, 190 S.W. 864; *Denneny v. Silvey*, 302 Mo. 665, 259 S.W. 422; *Little River Drainage Dist. v. Lassater*, 325 Mo. 493, 29 S.W.2d 716. 'Although new duties germane to an office are imposed on an officer, the compensation cannot be increased without violating the prohibition against an increase in compensation after election or appointment, or during the term of office. * * * However, such a provision does not prevent the legislature * * * from providing that a change in the duties of an incumbent of an office shall be accompanied by * * * an increase * * * of compensation where the duties added * * * are extrinsic or foreign to the office and not incidental or germane thereto.' 67 C.J.S., Officers, §95g.

"[5,6] The burden was on the plaintiffs to show that the increase in salary provided in S.B. 254 was intended by the General Assembly

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as compensation for the additional duties required by S.B. 237.

"In the instant case there was no statement in either S.B. 25⁴ or S.B. 237 to the effect that the increase in salary was to compensate for added duties. Neither bill referred to the other. * * * "

As heretofore stated, the statutes do not provide that the increase in compensation is for any additional duties required by statute to be rendered by said officers. To hold that the increase in compensation for said officials is due them during their present term would be in conflict with Article VII, Section 13, of the Missouri Constitution, supra.

CONCLUSION

Therefore, it is the opinion of this office that the increase in compensation provided for in House Bill No. 398, 74th General Assembly, cannot be paid the Members of the Board of Election Commissioners of Jackson County during their present terms of office.

The foregoing opinion, which I hereby approve, was prepared by my assistant Moody Mansur.

Yours very truly,



NORMAN H. ANDERSON
Attorney General