

December 16, 1969

LETTER OPINION NO. 525

Honorable N. William Phillips
Prosecuting Attorney
103 North Market Street
Milan, Missouri 63556



Dear Mr. Phillips:

This opinion is in response to your question asking whether the provisions of Senate Bill 165 of the 75th General Assembly relating to an increase in compensation for sheriffs of counties of the third class for additional duties imposed upon them in filing a report on the conditions of the county jail apply to such counties not having a county jail.

The pertinent portion of Senate Bill 165 now Section 57.407 is in part as follows:

"1. The sheriff in counties of the third class shall on January first of each year and every three months thereafter file with the circuit court of the county a report on the conditions of the county jail, the number of prisoners confined in the jail, together with recommendations relating to its operation.

"2. In addition to the salary, travel expenses, reimbursement expenses, and any other compensation now provided by law, the sheriff in each county of the third class, for the performance of these duties, shall receive the following sums per year: In counties having a population of less than seven thousand five hundred, the sum of six thousand eight hundred dollars; in counties having a population of seven thousand five hundred and less than ten thousand, the sum of seven thousand one hundred dollars; in counties having a population

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of ten thousand and less than eleven thousand five hundred the sum of seven thousand four hundred dollars; in counties having a population of eleven thousand five hundred and less than fifteen thousand, the sum of seven thousand seven hundred dollars; in counties having a population of fifteen thousand and less than twenty-four thousand, the sum of seven thousand nine hundred dollars; in counties having a population of twenty-four thousand and less than thirty thousand, the sum of seven thousand eight hundred dollars; and in counties having a population of thirty thousand and more, the sum of seven thousand five hundred dollars, payable in twelve equal monthly installments out of the county treasury, by warrants drawn by the county court upon the county treasury.

"3. In counties of the third class after October 13, 1969, the sheriff shall pay all fees collected by him in civil matters, and which were previously retainable by him, into the county treasury, except charges for each mile traveled, allowable to him, which he may retain, in serving civil process.

"4. Notwithstanding other provisions of this section the total compensation of sheriffs of counties of the third class with an assessed valuation of less than twenty million dollars shall not exceed ten thousand dollars excluding mileage."

In our Opinion No. 387 to Robert B. Paden, dated October 9, 1969, copy enclosed, we held that the increase provided was effective October 13, 1969.

In State v. Carpenter, 388 S.W.2d 823 (1965), the Supreme Court of Missouri, en Banc, held that the fact that an officer does not perform all or any of the duties of the office does not affect his right to the salary attached thereto unless the statutes provide otherwise. Here there is no contrary provision.

In that case the Court considered whether county school superintendents could receive compensation as supervisors of transportation and for preparation of budgets even in those counties where said superintendents have no duties with respect to transportation or budgets. The rule laid down by the Court was clear in holding that the legislature has the right to fix the amount of the salary of such officer and no one else has the authority to change it

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either before or after it becomes due and payable.

We are, therefore, constrained to hold that the salary provisions of Senate Bill 165 apply to present and future incumbents and that such officers are entitled to the increase in salary even though the county in which they hold office may have no jail.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enc: Opinion No. 387, Paden, 10/9/69