

COUNTY CLERKS:  
COMPENSATION:  
CONSTITUTIONAL LAW:

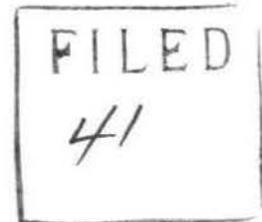
Section 51.310, House Bill No. 484 of the 76th General Assembly, effective September 28, 1971, relative to compensation for certain county

clerks for duties performed by them under Section 51.121, RSMo 1969, relating to a survey of voters, provides for an increase in compensation during the term of such officers in violation of Section 13 of Article VII of the Missouri Constitution and is not effective during such officers' terms.

OPINION NO. 41

February 2, 1972

Honorable A. J. Seier  
Prosecuting Attorney  
Cape Girardeau County  
225 North Clark Avenue  
Cape Girardeau, Missouri 63701



Dear Mr. Seier:

This opinion is in response to your question which asks:

"Is a County Clerk of a Second-Class County entitled to the compensation of One Thousand Five Hundred Dollars (\$1,500.00) as specified in RSMo. 51.310 for the performance of duties imposed by Section 51.121; said duties being performed during the year 1971 and having been completed before May 10 of same year?"

Section 51.121, RSMo 1969, which was derived from C.C.S.H.S. S.B. No. 13 of the 75th General Assembly states:

"In counties of the second, third, and fourth classes, which have adopted the provisions of chapters 114 and 116, RSMo, the county clerk shall annually, on or before May tenth, inspect all voting precincts in the county, review the described boundary lines, and survey the number of voters in each precinct measured by the vote at the last preceding presidential election, and within thirty days after the conclusion of such inspection, present a signed report to the county court and the county chairman of the two political parties receiving the

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largest number of votes in the last presidential election, detailing changes, alterations, and additions which appear to be necessary for the convenience of the voters."

The same act provided that for the additional duties imposed by the above section the county clerk was to receive in addition to the compensation provided by law the sum of \$1,500.00 per year. A third related section also provided that the county clerk was to be reimbursed for his reasonable and necessary travel expenses expended in the performance within the county of the duties imposed by that section in an amount to be determined by the county court not to exceed ten cents per mile traveled.

We therefore concluded on pages 7-8 of our Opinion No. 409, 1969 that:

"It should be emphasized that the first part of Paragraph 1 of Section 1 states that the county clerk 'shall annually, on or before May 10th,' perform such services. 'Annually' means '1. Reckoned by the term of a year . . . 2. Occurring once each year.' Webster's New International Dictionary, Second Edition (1950), p. 108.

"Inasmuch as the duties contemplated by Section 1 must be performed before May 10th but also must be performed annually, it is our view that Section 1 of the bill does not contemplate that any such duties will be performed during the year 1969; and as a consequence, no compensation can be paid during 1969 as the payment of such compensation during 1969 would constitute an increase of the compensation of the officer during his term without an additional increase in duties. We note also that Section C of page 6 of the bill provides that the provisions of Subsections 2 and 3 of Section 1 shall terminate December 31, 1970. The county clerk in counties of the second, third or fourth classes who perform the services set out under Section 1 of the bill will receive the additional compensation for such work in 1970, but not in 1969, and not in 1971 or thereafter.

"The payment of additional compensation for additional services is not in violation of Section 13, Article VII of the Constitution of

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Missouri which prohibits an increase in compensation of officers. Mooney vs. County of St. Louis, 286 S.W.2d 763 (1956)."

As we indicated above, the 1969 legislation itself provided that the section authorizing compensation for the additional duties to be performed by the clerk would terminate and would not be effective after December 31, 1970. We believe that it is also important to note that C.C.S.H.S.S.B. No. 13 of the 75th General Assembly provided a comprehensive formula for the computation of salaries of clerks of each county of the second, third and fourth class effective January 1, 1971. Thus, there is no doubt that the legislature intended that the salary schedule as therein provided would be compensation for the duties of such clerks including duties imposed by Section 51.121.

Section 51.310, enacted by the 76th General Assembly, House Bill No. 484, effective September 28, 1971, provides:

"For the performance of the duties imposed by section 51.121 the county clerk shall receive, in addition to all other compensation provided by law, fifteen hundred dollars per annum, except that such additional compensation shall be limited to five hundred dollars in such counties as are described in section 51.295."

You have also advised us that the county clerk of the second class county to which you refer completed the duties imposed upon him by Section 51.121 before May 10, 1971. Also as you have indicated such duties were completed prior to the effective date of Section 51.310. It appears clear that Section 51.121 imposed duties upon such clerk for which he could receive no additional reimbursement for the year 1971. This is true for two reasons.

First of all, Section 39(3) of Article III of the Missouri Constitution prohibits the granting of extra compensation to public employees, including such county employees, after services have been rendered. A legislative grant of this nature after the performance of such services would in our view be in violation of that provision of the Constitution.

In addition, although the compensation provided for the performance of such duties at the time the duties were imposed in 1969 did not constitute a violation of Section 13 of Article VII of the Missouri Constitution with respect to an increase in an officer's compensation during his term as we noted in our previous opinion with respect to the year 1970, nevertheless, the legislature expressly provided that such provision for additional compensation terminated December 31, 1970. Thereafter, since the duties imposed

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by Section 51.121 merged with the general duties of the office for which the clerk received other compensation it is our view that present Section 51.310 has the effect of allowing additional compensation for services which the clerk is already required to perform. Although the amount of the compensation is obviously identical to that previously provided for such clerks (except as noted in Section 51.310) inasmuch as the legislation enacted in 1969 automatically terminated such additional compensation as of December 31, 1970, the increase effective September 28, 1971 in our view constitutes additional compensation during such officer's term in violation of Section 13, Article VII of the Missouri Constitution.

CONCLUSION

It is the opinion of this office that Section 51.310, House Bill No. 484 of the 76th General Assembly, effective September 28, 1971, relative to compensation for certain county clerks for duties performed by them under Section 51.121, RSMo 1969, relating to a survey of voters, provides for an increase in compensation during the term of such officers in violation of Section 13 of Article VII of the Missouri Constitution and is not effective during such officers' terms.

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH  
Attorney General