

February 7, 1973

OPINION LETTER NO. 47
(Answer by Letter-Gene E. Voigts)

Honorable Christopher S. Bond
Governor of Missouri
State Capitol Building
Jefferson City, Missouri 65101



Dear Governor Bond:

On November 22, 1972, John C. Vaughn, the State Comptroller, requested an official opinion of the Attorney General as to the inquiries hereinafter set forth. Because the functions of State Comptroller have succeeded to the Office of Administration, and the Comptroller's duties to the Commissioner of Administration, and, since in the absence of a Commissioner of Administration, the Governor shall take charge of such office and superintend the business thereof, we are therefore directing this opinion letter to you.

Mr. Vaughn requested an official opinion of the Attorney General as to the following questions:

"(A) May a judge or commissioner of the State of Missouri who has twelve years of continuous service and who has reached the voluntary retirement age of 65 years and voluntarily retires receive an increased retirement pay based on the statutory salary of \$30,000 as authorized by Act #105, 2nd Regular Session 1972, pending a determination of an apparent violation by the State of Missouri of the general wage and salary standards promulgated under the Economic Stabilization Act of 1970 (P-L 91-379, as amended by P-L 92-10)?

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"(B) Assuming such judge or commissioner is within and bound by the general wage and salary standards, would the statutory salary increase authorized by Act #105 in excess of standards be suspended until the full rate of salary is authorized by the Act, or would the Act (sic) be a nullity so that no statutory increase would be authorized?

* * *

"(C) May such retired judge and his surviving beneficiary receive increased retirement benefits at the increased statutory rate, as authorized by Act #105, at a time when there is no longer any violation, if any, of the general wage and salary standards, notwithstanding section 476.530 which provides that the 'retirement compensation [of a judge] shall be equal to fifty percent of the compensation provided by law at the time of retirement' and section 476.535 which provides that his beneficiary shall receive benefits in the amount 'equal to fifty percent of the amount of the retirement compensation' of the judge?"

Senate Bill No. 132, Seventy-Sixth General Assembly, First Regular Session, relating to retirement and retirement benefits of certain judicial personnel was approved on July 13, 1971. Section 4 of that Bill, which became Section 476.530, Cum.Supp. RSMo 1971, provides:

"The retirement compensation shall be equal to fifty percent of the compensation provided by law at the time of retirement for the judges of the highest court on which the retired judge served as a full-time judge. Retirement compensation shall be paid to the retired judge monthly during the remainder of his life."

Because of the asserted application of the Economic Stabilization Act to the State of Missouri and the compensation of its judicial officers through litigation initiated by the United States of America as Plaintiff against the State of Missouri and

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William Robinson, Treasurer of the State of Missouri, Defendants, in the United States District Court for the Western District of Missouri, Central Division, Case No. 1888, questions have arisen as to what effect, if any, the Economic Stabilization Act has upon the determination of retirement benefits of judicial personnel as set forth in Section 476.530, Cum.Supp. RSMo 1971.

Two events have rendered the request for an official opinion of the Attorney General moot. The first was the issuance of Executive Order 11695, on January 11, 1973, which terminated Phase II of the Economic Stabilization Program and implemented Phase III. The second is that on January 29, 1973, this office received Plaintiff's Application for Leave of the Court to Withdraw Plaintiff's Motion for Preliminary Injunctive Relief. In that motion, plaintiff stated:

"Comes now the Plaintiff and moves that its motion for a preliminary injunction be withdrawn from the consideration of this Honorable Court.

"The President promulgated Executive Order 11695 on January 11, 1973. The Executive Order and regulations issued thereunder removed the need for prospective injunctive relief against the increased salary payments by Defendant State of Missouri.

"The Executive Order does not defeat any suit or action commenced with respect to any right possessed, liability incurred or offense committed prior to January 11, 1973. Plaintiff, therefore, renews its motion for mandatory injunctive relief for restitution of salary increases paid and received which were in excess of those permitted by the Economic Stabilization Act of 1970 and regulations issued thereunder."

Therefore, because the United States government is no longer asserting a claim that the present compensation of the judicial officers of the State of Missouri is in violation of the Economic Stabilization Program, the questions presented are moot. Thus, a judge who elects to retire receives retirement compensation which is equal to fifty percent of the compensation provided by law at

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the time of retirement for the judges of the highest court on which the retired judge served as a full-time judge. The phrase "compensation provided by law at the time of retirement," refers to those specific amounts as provided by the General Assembly of Missouri as set forth in the various statutory provisions defining the rate of judicial compensation, and, such amounts are presently unaffected by Phase III of the Economic Stabilization Program.

Very truly yours,

JOHN C. DANFORTH
Attorney General