



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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ATTORNEY GENERAL

February 22, 1974

OPINION LETTER NO. 48

Honorable David Q. Reed
State Representative, District 29
Room 235A, State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Reed:

This is in response to your request for an opinion upon the following question:

"Is it legal for a Member of the General Assembly to supplement the salary of a secretary employed by the General Assembly to do his work, by paying her additional compensation above and beyond her State salary, the source of such compensation being the member's private funds."

Section 21.150, RSMo Supp. 1973, provides for the manner in which the rate of pay of legislative employees is to be established. That section provides that the accounts committees of the House of Representatives and the Senate shall on the 15th of December of each even numbered year establish the rates of pay for all stenographic, clerical or administrative employees of both houses. The rates of pay thus established shall be the same as that for persons employed under the direction and established policies of the Personnel Division of the Office of Administration for comparable duties. It is our opinion that the limitations of the above statute do not apply in the present situation.

A predecessor of the above section, Wagner Statutes, page 904, Section 6, 1870, provided that the compensation fixed for

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legislative employees could not be increased or decreased during the term of employment:

"[E]ither by appropriations out of the contingent funds of either house, or, otherwise, in any manner whatever."

This section was held to prohibit extra compensation to clerks for night work as provided by a resolution of the House of Representatives. State ex rel. First National Bank v. Holliday, 61 Mo. 229 (1875). The court held that the house resolution providing extra compensation for night work violated the per diem limitation on compensation of the clerks. The court, however, indicated in its opinion the purpose behind this section.

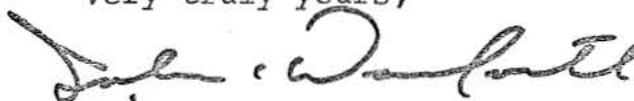
"The reasons which prompted the enactment of the law are familiar to all who are acquainted with the legislation of the state. The habit has been, at the end of each session of the legislature, to vote the people's money as extra compensation to clerks over and above their regular pay. This practice was designed by the law to be wholly prohibited. . . ." Id. at 231.

It seems clear that the 1870 law as well as the present statute are concerned with the manner in which public funds are disbursed. Logically, then, Section 21.150 has no application to a situation, like the present one, in which no public funds are involved. It is our opinion that the limit on the rate of pay set by Section 21.150 is actually a limit only on the amount of state funds to be expended. We do not believe that compensation received solely from a member of the General Assembly would constitute pay within the meaning of the above statute.

Chapter 558, RSMo 1969, deals with offenses relating to official duties. We find nothing in this chapter which would prohibit a member of the General Assembly paying his secretary additional compensation.

Therefore, it is our view that it is legal for a member of the General Assembly to pay additional compensation to his secretary, above and beyond her state salary, provided that, the source of such compensation is solely the member's own fund.

Very truly yours,



JOHN C. DANFORTH
Attorney General