

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

FILED
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Appeal No. SD 31307

SANDRA L. SKINNER, Clerk
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

State of Missouri, ex rel.,
COURTNEY M. GEORGE,

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FILED

Appellant/Appellant,

DEC 11 2011

v.

RANDY VERKAMP, BUD DEAN and LARRY STRATTON,
as the duly elected and serving Commissioners of the Phelps County,
Missouri, County Commission; **CAROL A. BENNETT**, as the duly elected
and serving County Clerk of Phelps County, Missouri; and
CAROL GREEN, as the duly elected and serving Treasurer
for Phelps County, Missouri.

Respondents.

RESPONDENTS' BRIEF

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SCANNED

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Respondents believe that Appellant's Appeal should be dismissed for failing to comply with Rule 84.04 in that she has alleged two points of error in a single point relied on. Without giving up said opinion, Respondents argue as follows:

ARGUMENT

The trial court did not err in denying Appellant's petition for a writ of mandamus because it correctly interpreted Article VII, Section 13 of the Missouri Constitution as barring a mid-term pay increase for appellant.

In her sole point on appeal, Appellant contends that the trial court erred in denying her petition for a writ of mandamus to compel payment of additional salary she believes she is entitled to. Her point has no merit.

As a prima facie matter, mid-term pay increases for prosecutors are unconstitutional under Article VII, Section 13 of the Missouri Constitution which states that "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." However, "Despite its plain language, the Constitutional prohibition against midterm increase in compensation is not absolute." Laclede County v. Douglass, et al., 43 S.W. 3d 826, 828 (Mo. 2001) *discussing* Hawkins v. City of Fayette, 604 S.W.2d 716 (Mo. App. 1980) (raise deemed permissible because after the election, additional duties for the mayor were required.); State ex rel. Dwyer v. Nolte, 172 S.W. 2d 854, 856-57 (Mo. 1943) (explaining that the constitutional prohibition does not apply when no compensation is

fixed for the office.); State ex rel. Moss v. Hamilton, 260 S.W. 466, 469-70 (Mo banc 1924) (holding that a midterm increase resulting merely from application of a statutory formula calculating compensation is not unlawful where the formula was enacted before the officer was elected.). None of these exceptions apply in the case at bar, despite Appellant's reliance on Moss. Moss will be discussed in greater detail later in this brief.

Mid-term pay increases for judges are constitutional under Article V, Section 20, of the Missouri Constitution which states in part "All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office." This exception to Article VII, Section 13 was intentional. The 1943-1944 Constitutional Convention of Missouri which promulgated the current Missouri Constitution had lengthy discussion regarding inclusion of the words "increased or" before "diminished" as set forth above. The "increased or" language was a part of the corresponding provision, Article VI, Section 33, of the Constitution of 1875. After lengthy debate and discussion, the "increased or" language was intentionally omitted from the current Constitution of 1945 leaving it then to the General Assembly, or now the Missouri Citizen's Commission on Compensation, to decide whether judges deserve raises during their terms. App. 1-20.

The Appellant seeks to have this Court extend the reach of Article V, Section 20 of the Missouri Constitution to encompass prosecutors as well as judges to circumvent the general prohibition of mid-term pay increases for elected officials because the General Assembly enacted §56.265.1(1). In arguing this point, Appellant relies upon State ex rel. Moss v. Hamilton, 260 S.W. 466, 469-70 (Mo banc 1924) and Attorney General Opinion, 123-2001.

In Moss, the Relator was the Circuit Clerk of Crawford County, Missouri and was seeking additional salary due him when Crawford County changed classification in the middle of his term. The classification was contingent upon a calculation factoring the number of voters in the previous presidential election by five, and then assigning salary depending upon the product. The Court reasoned that the law setting forth the pay scale for Relator was in effect prior to his election and thus his salary was fixed, even if it wasn't in dollars and cents. Id at 468-70. Thus, the Court held that the statute did not violate Article XIV, Section 8 of the Missouri Constitution of 1875's bar on mid-term pay increases for elected officials (Article XIV, Section 8 of the Missouri Constitution of 1875 is the corresponding article and section to Article VII, Section 13 of the current Missouri Constitution.)

As with Attorney General Opinion, 123-2001 it should first be noted that Appellant's "reliance upon and their citation to a Missouri Attorney General's opinion is not persuasive. Such opinions have no legal or precedential value before this court." Farnsworth v. Missouri Dept. of Corrections & Human Resources, 747 S.W.2d 180 (Mo.App. W.D. 1988). That being said, Opinion 123-2001 does help elucidate the difference between Moss and the case at bar. In Opinion 123-2001 the Attorney General stated it was his' office interpretation that Article VII, Section 13 was not implicated when a County changes classification resulting in changes in salary. Again, as in Moss, the issue was one of reclassification of Taney County which would result in a mid-term pay raise for the prosecutor in applying §56.265.

The issue of reclassification, or lack thereof, of the county is the crux of the issue and what causes both Moss and Opinion 123-2001 to be distinguishable. To be certain, there is no reclassification in the case at bar. But reclassification is the common theme in Moss and Opinion

123-2001 and the reconfiguring of salary based upon reclassification of a county makes sense.

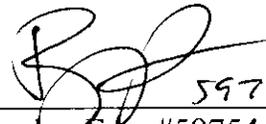
When a county gets reclassified, the workload can increase or decrease depending on the reclassification. It makes sense. But to reconfigure salary without any reclassification as sought by Appellant does not.

In her brief, Appellant argues “although not specifically holding §56.265 constitutionally invalid, the practical effect of the trial court’s ruling prohibiting an increase in a fulltime prosecutor’s salary is to find that section constitutionally invalid to the extent that, it permits midterm increases.” App. Br. 12. If this Court finds in the alternative that §56.265.1 is constitutional and allows the mid-term pay increase for prosecutors it would create a very slippery slope. It would permit the General Assembly to evade the constitutional protections set forth Article VII, Section 13 and permit any elected official to receive mid-term pay increases merely by creation of a statute tying the position’s salary to that of judges.

CONCLUSION

This Court should affirm the ruling of the trial court as it did not err in denying Appellant's petition for a writ of mandamus because it correctly interpreted Article VII, Section 13 of the Missouri Constitution as barring a mid-term pay increase for appellant. Both Moss and Opinion 123-2001 are inapplicable in the case at bar as there was not a reclassification or other triggering event to allow for the prosecutorial mid-term pay increase. §56.265.1(1) cannot evade the general prohibition of mid-term pay increases for prosecutors simply by tying prosecutorial salary to that of judges.

Respectfully Submitted,

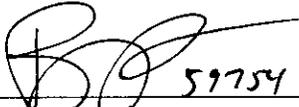


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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that Respondents' Brief was prepared using a Microsoft Word, 13 point Times New Roman font type, contains 2,161 words, and the accompanying disk of Respondents' Brief has been scanned for viruses using a current AVG virus scan, which detected no viruses therein.


59754

Brendon Fox

CERTIFICATE OF SERVICE

The undersigned certifies that two copies of Respondents' Brief and a compact disk with Respondents' Brief prepared using Microsoft Word, has been served by U. S. Mail, postage prepaid, this 24th day of October, 2011, upon the following counsel for Respondent and party:

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Brendon Fox

APPENDIX

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Debates of the 1943-1944 Constitutional Convention of Missouri, pages 3501-3520. . .A1

MR. PARKER: The Court of Criminal Correction was, in a way, recognized by the Constitution of '75 in this that it said that all courts then in existence should be continued and that court was, at that time, in existence. Now, the court of criminal correction is one of the best courts that we have in the City of St. Louis of anybody's court. It deals with a class of cases that requires a judge of special ability and also with a heart and that court now, by law, has terms of four years. If this amendment carries then they could make -- the Legislature by law could decrease that in two years or three years and as the court is a substantial court and has been in existence since 1866, it does appear to me that it should have a term fixed, as Judge Allen has called your attention to, the section which recognizes that individually. Now, as a constitutional court we wouldn't want the terms of the office to be continually changed by the Legislature but they could do and might do in case that the judge didn't happen to please members of the Legislature from that city and I think we ought to support Judge Hennings amendment. I am not caring anything about the courts of Hannibal, because we are not interested in that in a substantial way throughout the state along with three or four of them and so that was the reason that I made this suggestion that we don't want that court continually harassed.

MR. ALLEN: Mr. President, I only desire to add one or two words to what Mr. Parkers has said. We not only recognize this court in Section 1 but both reports of judicial selection in this Committee provide that the court of criminal correction shall come under the provisions of that section. Now, Mr. President, if our aim is for solid tenures of judges who have proved their ability then if this court is of sufficient importance to receive the unanimous report of this Committee as being one of those within that category, it should have the dignity of a fixed term and not leave it to the Legislature.

PRESIDENT: Further discussion on the amendment? Are you ready for the question?

(Chorus of "Question".)

PRESIDENT: As many as are in favor of the amendment, let it be known by saying "Aye".."Opposed"? The ayes have it. The amendment is adopted. Are there other amendments to the section? If not, the section as amended will be considered perfected. Section 24.

MR. RICHTER: I shall appreciate it if the Clerk will read Section 24 and then I should like to have him read the substitute for Section 24 which I introduced a few days ago.

(Clerk read as follows:)

Section 24. All judges and magistrates shall receive such salary as is or may be provided by law. No judge's salary shall be increased or diminished during his term of office. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business. The fees of all courts,

judges and magistrates shall be paid monthly into the treasury of the state or to the county paying their salaries; provided that judges and magistrates may also receive reasonable traveling and other expenses as provided by law.

MR. RIGHTER: May I say that...

PRESIDENT: (Interrupting): The substitute will be found on page 16 of May 25 Journal. Clerk will read the substitute.

(Clerk read as follows:)

SUBSTITUTE NO. 1 FOR SECTION 24. Offered by Mr. Richard S. Righter. Amend File No. 15, Page 7, Section 24 by striking out this section and substituting the following section in lieu thereof:

Section 24. All judges shall receive as salary their present total compensation, or such as may hereafter be provided by law; provided, however, that the present compensation of each probate judge, including clerk hire, shall continue to be paid as now provided by law until the expiration of his present term of office. No judge's compensation shall be diminished during his term of office. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law, or do law business, except probate judges during their present terms. The fees of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries. Magistrates shall receive such salary as may be provided by law. Judges and magistrates may receive reasonable traveling and other expenses as provided by law.

PRESIDENT: Do you move the adoption of the substitute?

MR. RIGHTER: I move the adoption of the substitute.

PRESIDENT: Is there a second?

(Motion was seconded.)

MR. RIGHTER: I would like to make a word of explanation about it. The substitute is only slightly different in effect from the original section. After the Committee's report was completed we distributed a considerable number among judges and lawyers in the state and particularly sent a considerable number of copies to the joint committee of the judges and the Missouri Bar Association and the immediate reaction of the number of judges was this. Their compensation, their basis compensation as the lawyers here know is rather small in most parts of the state and perhaps all over the state the basic compensation of a circuit judge, for example, is \$2,000 a year. Well now, the old Constitution provided that the salaries of judges could neither be increased nor decreased during

their terms of office. Well, in the case, let us say, before an appeals judge, it is not a practical thing to increase the salaries and have one judge who is new on the bench after the increase is made receiving a larger salary and another judge whose term may have ten years to run receiving a much smaller salary. The result is that the Legislature has resorted to various devices to increase judges compensations without actually increasing their salaries as judges. As I said, in the case of circuit judges, I know the situation in Kansas City particularly, the judge receives a basic salary which is completely inadequate, then the Legislature increased it by giving the judges salaries as jury commissioners and later on a further increase was necessary so they increased it by giving the judges the salaries for acting as a prole board. Now, that is an artificial situation which arose entirely by reason of the provision in the old Constitution that a judge's salary could not be increased during his term of office, no matter of course, how inadequate it might become by reason of rising prices and the general trend, as we all know, for a hundred years has been upward so that a dollar today is worth, in purchasing power only a fraction of what it was one hundred years ago.

Now, our intention, the intention of the Committee was that judges should continue to receive their present total compensation, whatever they get, from all sources, that is, as judges, as jury commissioners, and as members of the parole board or in the case of the Supreme Court those judges have a base compensation, as I recall it, of \$4500 a year. But they also receive, I think it is \$5500 a year by reason of this situation I described for writing their own syllabus. Syllabus as laymen may understand, is the little condensed note that goes at the beginning of a case stating in effect what the decision holds.

Now, it was our intention that the Supreme Court judges should continue to receive the \$10,000 a year they now receive; that the circuit judges should continue to receive the total amount they received but that that should be as salary for acting as judge and not for any other purpose. And since it appeared to a number of people that we have not clearly expressed that intent, the section was rewritten so as to make that purpose entirely clear and I may say that I did quite a little work on it myself and I worked with a number of judges on it and finally the members of the joint committee of the bench and of the Missouri Bar Association spent an afternoon down here working on it and this section, substitute section 24 is the result.

MR. BROWN (OF CHRISTIAN): Mr. President.

PRESIDENT: Does the gentleman yield?

MR. BROWN (OF CHRISTIAN): I would like to interrogate Mr. Righter with regard to one feature of this section?

MR. RICHTER: Yes.

MR. BROWN (OF CHRISTIAN): I notice in Section 24 of the Committee report, it reads "all judges and magistrates shall receive such

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salary as is ~~or~~ may be provided by law" then in your amendment you say "all judges shall receive as salary the present total compensation". Now, as I remember this matter being discussed in the Committee and I'll ask you if you don't remember the same thing, the word "total" was stricken out in the Committee Report for the reason that a lot of circuit judges in cities adjacent to country districts at least receive quite a sum on change of venue fees. That is \$10 in each case centum and might amount to four, five or six hundred dollars a year. Now that would be, in your opinion, would it not, Mr. Righter, included in the word "total" over and above all the things that you stated that a circuit judge now serves upon to make his present salary of \$5500?

MR. RIGHTER: I don't think so, Mr. Brown. The \$10 that a judge receives on a change of venue is a fee. It is not in the nature of a salary and it isn't regular compensation. It only occurs when the judge happens to have a change of venue taken so that I do not think that this would affect that.

MR. BROWN (OF CHRISTIAN): Do you think that that would not be included when they started to figure up how much their total compensation was for a year?

MR. RIGHTER: I don't think so. It was not our thought in writing this that that \$10 would be included.

MR. BROWN (OF CHRISTIAN): Another question. In about the center of the section you state here "except probate judges during their present term". Why should that be in there when it says judges above their "no judge's compensation shall be diminished during his term of office"?

MR. RIGHTER: If you will permit me to complete my explanation. When you started to interrogate me I was in the process of making an explanation of why this section was drawn as it is. If you will let me complete it I think I will answer that question.

Now, I stated the reason why we altered the language on the question of the judges' compensation and the numbers will note that instead of saying that no judge's salary shall be increased or diminished during his term of office, the substitute reads "no judge's compensation shall be diminished during his term of office." In other words, it can be increased but it can not be diminished and the reason why the increase was taken out was to cure the very vice that I have described of putting the Legislature to an indirect method of increasing salaries because it wasn't practical, because the Constitution prohibited their doing so directly during the judge's term.

Now, on Mr. Brown's question probate judges are in a special category. At the present time they subsist entirely on fees. Their clerks and employees are in a peculiar situation. The clerk of a probate court is not an employee of the state; he is not an employee of the county; he is a personal employee of the judge and the judge is responsible for paying his salary and no one else. Now, in Kansas City, for example, we have about twenty-five,

perhaps thirty employees, all of whom, as the law now is, are entirely dependent upon the probate judge to pay their compensation. Now, we contemplate terminating that situation but if you terminate it prematurely before the Legislature has had an opportunity to set up machinery for providing for these clerks and providing for the manner of their compensation, it is entirely conceivable that the probate courts, especially the large probate courts in St. Louis and Kansas City would be entirely disorganized so we provided that the present compensation of each probate judge, that is the fee system in other words, including clerk hire which is essentially a part of the set up, shall continue to be paid as now provided by law into the expiration of his present term of office, that would give the Legislature the opportunity to take care of that situation.

Now then, the last, the only other part of the section that calls for any explanation, I think, is the last sentence. "Judges and magistrates may receive reasonable traveling and other expenses as provided by law". That was put in there by the Committee and the reason for it is this. As the Convention knows, we have provided earlier in this section for the power to transfer judges from one court to another temporarily for the purpose of helping the docket and expediting the administration of justice. Now, it is not fair that a judge who is living in one place and has his home, his fixed expenses there, ought to be asked to go to another jurisdiction and sit unless some provision is made for the expenses which he will incur in doing so. Furthermore, we have, as you know, in the magistrate section of the article, in effect, made the jurisdiction of magistrates coextensive with the county. Now, in some counties there will be more than one fairly large town. In some perhaps, several. For example, in Linn County the county seat is a sizeable community and the town of Brookfield is even larger. A magistrate, in order to perform his duties and particularly if there are only one or two in the county, may have to travel back and forth. He may have to hold court one day a week or one day every two weeks in one place and then hold it again in another place and he ought not to have to do that out of his own pocket. Such rather minor expenses would be incurred in that connection ought to be provided for by law and we have permitted the Legislature to do it by this last sentence.

PRESIDENT: Are there any amendments?

MR. TEE: I have an amendment, please.

(Amendment submitted and read as follows:)

AMENDMENT NO. 1 FOR SUBSTITUTE NO. 1 FOR SECTION 24.
Amend Mr. Righter's substitute for Section 24 by inserting the words "increased or" between the words "be and diminished" in line 6 of said substitute as the same appears on page 16 of the Journal of May 25, 1944.

PRESIDENT: Do you move the adoption of the amendment?

Mr. Tee: I Do.

(Motion was seconded.)

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MR. TEE: Now, Mr. President, I have called attention to the sentence in Section 24 of the Committee's report reading as follows and found in lines 2, 3, 4 of the section. "No judge's salary shall be increased or diminished during his term of office." Now, the Committee gave that part of the section a great deal of attention. Those words were not placed in there without consideration. Those words are also found in the present Constitution and I believe they should continue to be a part of the Constitution with reference to this subject matter. Now, I...

MR. BRADSHAW (Interrupting): Mr. President, may I interrogate Mr. Tee?

PRESIDENT: Does the gentleman yield?

MR. TEE: I do.

MR. BRADSHAW: Mr. Tee, is not the same purpose served by Section 6 of File No. 7? I am reading here from the Phraseology report which 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?

MR. TEE: That was the very action that I was about to refer to.

MR. BRADSHAW: Is there any reason for your amendment?

MR. TEE: I think so because I am of the belief from remarks here made that this section, as amended, 24, as amended, would be considered an exception to their language in File No. 7 which you just read.

MR. BRADSHAW: The word "compensation"--is not that word used in the section?

MR. TEE: Yes.

MR. BRADSHAW: You use the word "salary", do you not?

MR. TEE: Well, it all means the same thing. Now, there is no reason why that this salary or this compensation should not be fixed and it should not be susceptible to be juggled around and juggled around like it has been or like this amendment would permit it to be in one direction only. Judges, those men who are competent to be judges, I think are competent to decide, that is to understand the terms upon which the office to which they aspire and which is offered and I think it not an unjust thing to expect them to continue throughout the term of that office upon the terms upon which it is offered. We are not taking any undue advantage of those people by making the limitation on both ends of this matter. I think it should be retained.

Now, in answer to Mr. Righter's fear that if we do not allow this latitude that the same evil ^{would} recur that has under the present Constitution, now in answer to that I want to read a paragraph from a document which I received sometime ago dated April 7, 1944, and

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which bears the signature of what purports to be the signatures of George R. Ellison and Samuel H. Liberman. Now I find this language in this document, if I can find it: "If the present compensation of judges -- fixed before the great War had affected economic conditions" -- that is the wrong place. Pardon me. "Because of these facts a constitutional provision prohibiting a change in the compensation of judges during their terms amounts to freezing their salaries. For a change can never be made without discrimination, since new or reelected judges are coming on and incumbents are leaving all through the years. And there can be no allowance of extra compensation because the third sentence of Section 24, File 15 now expressly forbids that." So you see there will not be, according to these gentlemen, any recurrence of the evil which is here held before you as a reason for allowing this additional latitude in the new Constitution. Now, I want to continue reading from this same paragraph. "We do not complain of that provision; we favor it. But if the words 'increased or' are not stricken from the second sentence of Section 24, the only avenue left open to the judges in obtaining a salary increase, will be to seek the help of the practicing bar, political organizations and other special groups, in waging a statewide campaign for a constitutional amendment." Yet, mark you the judge's words and Mr. Liberman's words, "Yet that, also, is now forbidden in spirit, at least, by Section 6 of the Constitutional amendment of Article VI, adopted in 1940, known as the Non-Partisan Court Plan". Now, we have here a lawyer from St. Louis, we have a judge of the Supreme Court threatening this Constitutional Convention that if you don't write this section the way we want it we will go to the people with it in spite of the fact that our doing it would violate the spirit of the present Constitution itself. Gentlemen, that is not practical. That is not a method of procedure that is becoming of any judge and I hope these words will be placed in this amendment.

MR. ALLEN: Mr. President, may I inquire of Mr. Tee?

MR. TEE: Yes, Mr. Allen.

MR. ALLEN: Mr. Tee, what good reason is there why a competent judge's salary should not be increased during his term of office?

MR. TEE: I don't know of any good reason why it should, Mr. Allen.

MR. ALLEN: Well, don't you think that the good book says that if a servant is worthy of his hire that that should apply to a Supreme Judge as anybody else? Now, you say you know no reason why a judge's salary should not be increased and you answer by saying that you do not know why it should be increased. That is your sole answer for this amendment which you sent up here, is that right?

MR. TEE: No, I think in siggling out particular officers and giving them special privileges which are denied to other offices of the state. The section which Dr. Bradshaw just read denies that privilege, that particular, preferred right to every other office in this state. Now, in my opinion, judges are no more sacred and wear no more haloes, than any other officer of

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this state. You understand we have the government in this state and those gentlemen on the bench of the Supreme Court occupy positions in one branch of that very government.

MR. ALLEN: Well now, this applies to all judges, doesn't it, Mr. Tee?

MR. TEE: I think so.

MR. ALLEN: Now, let me ask you something further. Do you think it is right that Section 6, as read by Dr. Bradshaw, should have been adopted as a matter of constitutional law by this Convention in fixing in the Constitution a limitation against raising the pay of able servants during their term of office while permitting it to those who may come after them or who may serve jointly with them? Do you think that is sound constitutional law?

MR. TEE: I certainly do.

MR. MOORE: Mr. President, I rise to oppose the amendment offered by Mr. Tee. At the time Section 6, File 7, was being discussed I raised this question at that time and the answer was that it could be taken care of in the Judicial File. I also discussed this section with various appellate judges, circuit judges, and some lawyers over the State after the Judicial File was reported and they all came to the conclusion that if this file was adopted as it was written Section 24 and Section 26 taken together would result in a holding that the total compensation of members of the Supreme Court would be \$4500 a year until the Legislature could act and that the salaries or the total compensation of rural circuit judges would be \$3,000 per year because that was their salary. Consequently, a great deal of thought and study was given to the matter for the reason that no one on the Committee or otherwise I believe wanted the situation so that the compensation of Supreme judges would be reduced from \$10,000 a year to \$4500. The compensation of rural circuit judges reduced from \$6,000 a year to \$2,000. Mr. Righter has pointed out the various devices that have been used in order to give these gentlemen reasonable compensation. He pointed out the appellate court situation but didn't mention the rural circuit judges. My recollection is that rural circuit judges were paid a salary -- a salary was fixed at \$2000 a year. Under the Constitution it would not be raised during their term of office and their offices were not all concurrent but run more or less consecutively, so to speak. Then they were given \$1500 a year as juvenile judge and then they were given \$1200 a year expense account and then they were given \$1300 a year as jury commissioners so that their total compensation was put up to \$6,000 a year. I don't believe anyone would contend that that is too much.

Now, the reason as I see it, why the Constitution should not prohibit the increasing of a judge's compensation during his term of office is this. Take any of the three appellate courts, for example. They are now put on for a term of twelve or fourteen years, I don't know which but that is the longest term of office of any public officer. Economic conditions change. Back when their salary was \$4500 a year that was reasonable compensation taking into consideration the cost of living and other costs, but

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after the lapse of eight or ten years conditions changed and \$4500 a year was not enough but they couldn't increase the salary and our Legislature representing the whole people took the thing into consideration and used various devices in order to increase their compensation. They all realized that as a subterfuge and no one likes a subterfuge.

Now, economic conditions may change again and if our Constitution provides that our appellate judges, judges of Kansas City Court of Appeals, I believe draw \$8500 a year. If it provides that this provision that this shall be considered as their total compensation of salary, that the Legislature cannot increase it, \$8500 a year ten years from now may not be enough. And yet, we have put the Legislature in a straitjacket and they can do nothing about it. Now, this substitute as worked out by Mr. Righter and other gentlemen and various ones have worked on it and studied it, appears to me to be flexible enough to permit the Legislature to take care of the situation as it arises. Therefore, I think that it should be adopted. I do not believe that we should straitjacket the compensation of the judges and the Legislature so they can do nothing about it. Now, you may inquire why not permit them to diminish it during the term of office? I do not see any conflict of theory or reasoning at all in putting that restriction in and leaving the other out for the reason that it is possible. I believe this has been carried as a matter of public policy. A movement could be instituted to put the man out of office by diminishing or increasing or taking away their salary. I believe that it is good policy because it creates a more independent judiciary and that is what we want to restrict legislative action to the point where salaries of appellate judges or circuit judges cannot be diminished during their term of office. I believe that it is economically unsound to say that it cannot be increased. I hope that the substitute will be adopted. I hope that Mr. Tee's amendment will be defeated.

PRESIDENT: Further discussion on the amendment by Mr. Tee?

MR. HEMPHILL: Mr. President, I understand this is not strictly a legal question but perhaps comes around to a business question. Therefore, I would like to express my opinion about it. I favor the amendment by Mr. Righter and I object to the amendment by Mr. Tee. I think it is a very fine thing the Committee's arranged there to get away from subterfuges that have been used in the past. Those kind of questions are very objectionable and there is this matter of increasing wages. It seems to me that it is entirely impractical to have two or more men doing the same job and paying them different wages. No businessman could carry on his business in that way. Now, a Supreme Court judge is just as human as anyone else and he'd have the same objections, have the same thoughts, as any other man if he was serving in a position and getting a lower rate of pay than another man doing the same sort of work. I believe this is entirely practical -- this amendment offered by Mr. Righter and I believe it is the amendment we should adopt and we should not accept Mr. Tee's amendment.

MR. SATER: Mr. President, gentlemen of the Convention, I am absolutely willing for the judges to receive due compensation for

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their services but the fact that the Legislature may have circumvented the Constitution in other days is no reason why we should put in this Constitution a provision that the salary might be increased. It has been the policy of this state that the salary of officers should not be increased during the term. I know of no reason why it should apply to other officers of the state except the judges. It was spoken and said that economical conditions may change and that is true but the change in those economical conditions affect everyone of us whether we are on the bench or whether we are off and economic conditions many times make many a one wish he was on the bench rather than off. So that that is not the argument for changing the salaries of the judges. But the fact remains circuits of this state and country districts are made up usually of more counties than one for instance four or five counties. Each county has a representative and possibly in that circuit a senator and the fact is that the judge has power of influence over the district and when you leave in the Constitution the provision that his salary may be increased during his term of office you're leaving open a pressure from the circuit judge to every representative, every senator from his district to come to the Legislature to increase his salary. When he accepts the nomination and the election or appointment, whatever it may be, he accepts it -- he knows what the provision is at that time. He accepts it as a man does when he marries for better or for worse so I think that our policy alone in the past has been wise and we should not permit the extension or increase of salaries during his term of office.

If a situation is such that it might bring about some bad results, if we permit that. So I hope that the amendment is either carried or that the Righter substitute is defeated. It is said that this defeats the circumvention of the Constitution. True, the Legislature added some duties and paid some additional salaries. It likewise added additional duties to the Superintendent of County Schools, to that of bus inspector and increased the salary as bus inspector. Now, the policy of your Committee, both Doctor Bradshaw and I, think the tradition was to stop that kind of practice and we can do it by giving proper salaries to our officers and let them serve their term at the amount that they accepted the service as then provided.

MR. STORCKMAN: Mr. President, I believe that there is a sound distinction here in principle which has not been pointed out. The Judicial Department is not in the same category as the Executive and Legislative Department. I believe this was referred to when we were discussing Section 7 of the Miscellaneous File. Those in the Legislative and Executive Department have more control over the salary situation. They are either in the position of legislating directly on it or vetoing legislation. That is true whether it be a state office, a county office or a city office. On the other hand, the circuit judges do not have any control over that situation. They are not in a position of raising their own salary or vetoing a raise on the salary. Our efforts have been to get them out of political situations as much as possible and I believe that this distinction is such that it justifies the exception that

we are making. I think that Mr. Tee's amendment should be voted down. So far as I know the Judiciary is the only place where this subterfuge has had to be resorted to and I think that the way, for the reasons that I have pointed out, that the way should be left open to deal with this question straightforwardly and not by methods of subterfuge as has been required in the past.

MR. NACY: Mr. President, I only rise to say that Mr. Storckman is not correct in his statement that subterfuge has not been resorted to all the way down the line in the Executive Department for and since the elective officers now are members of the board of equalization and every day they meet they get \$5. Their salary now is \$3500 a year, I think. The same thing is true with the Secretary of State on the printing commission. The same thing is true with the State Auditor on the board of fund commission. The same thing is true with, as Mr. Sater has said, about the Superintendent of Schools. That is the most ridiculous thing I think the Legislature has ever done. They take a school teacher, ordinarily the gentlemen are school teachers, and they elect him as Superintendent of Schools, County Superintendent of Schools and then the Legislature makes him a bus inspector. He is supposed to lift up the engine and see if all the spark plugs are hitting or to fix a tire or all that sort of thing for which he gets compensation.

Now, all the elective officers also are members of the Permanent Seat of Government for which they get \$100 a month so that this purpose has not been confined at all to the judiciary but it has been wide-spread and used throughout the whole state business. Insofar as the Governor having the power to veto these things, that is true; insofar as the courts having no power, it is not true because here we present this question right here. There is a general provision now I believe in File 6 -- which is it Mr. Bradshaw -- in File 7, the general provision that no officer shall have their salary increased or diminished during their term of office. Now, we come along and say that the judicial officers shall not have their salaries diminished. Now who is right on that whether which section will apply the general, special or the specific situation? My opinion is that the court would say in the final analysis which section would apply so that the courts do have a great deal of power.

Mr. Allen asked a question awhile ago, why should a judge's salary not be increased during his term of office? Well, the same question might be asked about every other county or city office -- why shouldn't it be increased if it becomes necessary to increase it? I can't see the distinction.

I think Mr. Tee has well said that this is one government not three but this is one government with three component parts -- the legislative, judicial and the executive. So why make -- I realize that the judges are elected for longer terms. That is for twelve years and ten years and that the conditions do change more in ten years than they do in four years but the point is that the history of the salaries of all three branches of the government has been the same. That the Legislature has used subterfuge to increase their salary.

MR. PARKER: In the House, I was guilty of using these subterfuges in one form or another in raising judges pay. As I handled all the salary increases of judges up to the last, I was a member of the Legislature then and we did use subterfuges but, as Nancy has just told you, that did not apply only to the courts as every state officer under the Constitution has had his pay increased by one sort of subterfuge or another. And as far as the judges are concerned I think we ought to place a limit, now mind you I have been in favor of the high pay for judges all the time, never opposed it in any way, but the judges are no different from anyone else. We have here the situation arising now from the economic conditions that the lawyers all over this land are suffering from a lack of clientele that will enable him to make the sort of living he formerly made and to make the amount of money. In the big cities like St. Louis and Chicago and Cleveland and others a great many lawyers who had good businesses a few years ago have gone to their residences and given up their offices and are trying to make a living and I can't see why that we should, at this time when the economic conditions are such as they are and no doubt will be bad for the next probably one hundred years, when we get done paying the debts of this war, and I can't see why those who are lucky enough to be elected should be in a special position in drawing large pay. And I am sure we are just not thinking for a minute when we express ourselves that the judges should have this large pay.

I am not afraid. I am one of the lawyers that is not afraid what the judges are going to do to me or any case that I am interested in. I have gone on the high principle all my life that judges should try a law suit and not the lawyer and I think that is true but there is some lawyers that appears to think that it is not true, that they have to cater to the judge. I didn't think that when we was increasing the pay, but we paid them, the Supreme Court Judges \$4500. It is true that then these judges had a good clientele because they couldn't be otherwise and be elected to the Supreme Branch of this state. They had to be well equipped lawyers. And we did use that subterfuge. That is true. We put, we hung the court of appeals on the syllabi and then in the City of St. Louis and Kansas City we made them jury commissioners and by and by we made the country circuit judge a jury commissioner and we allowed him expense money. We better resort if needs be to these subterfuges than to go and leave to a legislature the pressure that can be put on that Legislature just as my friend in southwest Missouri has told you, and increase his pay and be in no position to lower his pay in case it becomes necessary in accordance with all of the other salaries fixed in the United States. So I am in favor of these amendments and I am opposed to Righter's amendment.

(The Convention recessed until 2:00 o'clock.)

PRESIDENT: Section 24 pending on Mr. Righter's substitute for the whole section and Mr. Tee's amendment to the substitute.

MR. PARK: Mr. President, I want to bring the attention of the delegates to Mr. Tee's substitute. I suggest that the vice in this substitute is this, that as long as the Legislature has a right to

impose additional duties upon the courts, it is inconceivable that with those additional burdens, the Constitution should prohibit an increase in pay. I can conceive of a situation where a judge, during the first year of his term, is given additional duties by virtue of legislative enactment, yet under the amendment, no matter how heavy those duties were, or how numerous, he would be confined to the same pay as at the time he took office. It seems to me it's, it would be, unless we could limit the right of the Legislature to impose additional duties, it is incompatible with that amendment. And then I have one other suggestion to make in answer to what was possibly an ill considered remark of the gentleman offering the amendment. I think the judge who calls attention to the law as it now exists, prohibiting activities of judges, should not be accused of attempting to force the people into increasing or suggesting a coercion of the people or to increase his pay. The contrary must have been the thought of the judge and the attorney who assisted him in the letter that was read, in the preparation of the letter that was read, when he called attention to the fact that no such thing would be possible. I can't understand the construction of the language of that letter to mean that he would attempt to coerce the people.

MR. ALLEN: Mr. President.

PRESIDENT: Are you through, Governor Park?

MR. PARK: Yes sir.

MR. ALLEN: Mr. President, a great deal has been said this morning about Section 6 of File No. 7. I should take but a few moments to call attention to the unfairness of using the argument that has been used concerning Section 6 of File 7 as applied to this file. When that file was before this Convention we were then quartered in the Supreme Court Building. On the day on which it was considered there was a small attendance. When this section came up, numerous attempts to modify and amend this section were made.

Mr. Moore, I shall not attempt to repeat what he said, but I agree entirely with his statement because I know that in my own file here, one of the amendments which we offered when we were opposing this entirely, this file, the entire file, and that amendment was to the effect of adding the words after the word "office" in Line 3, "unless such officer belongs to a class or group whose terms do not expire at the same time. Now, at least three delegates who were supporting the theory back of Section 6 took the floor and said that will be disposed of and that issue can be taken care of when the court file comes up.

Now, they are attempting to use it as a bar with the further consideration of this matter. Mr. President, it seems to me that in our work of submitting a plan for a modern form of government under the Constitution which we shall offer, we approach more nearly the theory that I have in mind upon the educational file when we left the way open to go out and bid against the world to get the character of men we wanted to hear our educational system in this

state. It seems to me that if the bars of public service were open freely, under the control of our Legislature to invite men into public service who could be of advantage to the state even if we please, Mr. President, to bidding against business, because there is no greater business in the State of Missouri than the business of the State of Missouri itself and the idea that we can't today, the State of Missouri cannot today, under our present Constitution, bound as it is by constitutional limitations, even the Legislature itself, when it finds it is necessary to reach out and give, the men are limited because they cannot raise their salaries during their ten years of office.

Now, they make a great bugaboo about the salary business. I think, Mr. Parker and Senator McReynolds and those men who have had long experience in public life and the affairs of this state know that the salary appropriations of this state are the smallest appropriation towards running the business of the state. There is no more reason why, and I have not yet heard a good reason either on the other argument on the other file and I have asked for it, why the Legislature should be forbidden to raise the salary of a competent public official during his term of office. Now, if we just have these offices here for those who can't do anything else, where we have to take care of these fellows that can't do anything else but hold public office, you might have some excuse for saying "Well, we'll take care of them, but we are going to limit them."

Mr. President, I believe that if the Legislature would give the right and the power to provide for competent salaries for men in public office where they could keep them, that it would be a step forward in this state. Now, I don't care to repeat. So far as this judiciary file is concerned, I merely say that in order to limit the system as far as I have been trying to do on this entire Convention, now when you approach this judiciary proposition I think Mr. Storckman and several of the members very properly pointed out to you the difference between a judge of the court and between other officers of this state. Now, the argument seems to be directed here against the Supreme Court. Several statements have been made that \$10,000 was enough and similar statements, but this affects every judge in the state. Now, if you please, Mr. President when a man, when a lawyer who is competent to serve as a judge, leaves his practice and becomes a member of the judiciary, he thereby loses all of his clients and if he serves a few years and serves well, if he finds that he cannot live with the income that is provided by the state for that office, he is forced to go out again and start all over. It's my theory that it is the tenure of this Convention to try to make some stability to our courts and if that is true, then it should be left to the General Assembly to see that if they get competent men, they can keep competent men. I hope the amendment is defeated.

MR. GARTEN: We might recall briefly that the federal constitution provides that the salary of an executive should not be increased or diminished during their term of office, but in the case of the judges it merely provides that they shall not be diminished and that is what our Committee Report covers.

PRESIDENT: Further discussion on the amendment?

MR. BROWN (OF CHRISTIAN): Mr. President, I am in favor of the Tee amendment, for the reason that I believe that a twelve year term affects this Convention within itself, is some guarantee to the judges or the courts that they are to receive a decent salary over a period of time. Now, if they were to serve for four years or something like that, they probably should receive more money, but when a man is appointed or elected and stays in that office at \$10,000 per year for twelve years, he receives \$120,000 and that, to my mind, is some sum of money that a man ought to be able to save a little bit and especially if he should hold two or three terms as contemplated by some of the laws and parts of the Constitution as it now exists.

Another thing why I think that the salaries should not be increased during the incumbency or during the term is this. As pointed out by Mr. Sater, judges do use, and do have an influence with the Legislature and they are bound to use that power the same as the county clerks and other officials who have organizations to get their salaries raised while they are in office. That is unfair to the people of the state and should not be used in my opinion. Further than that, my good friend John T. Opie from Kansas City, introduced a proposal here, as I recall about "vote swapping" if such as this be incorporated into the Constitution. It seems to me that there might be some "vote swapping" by the members of the Legislature who desire to raise the judge's salaries, saying "If you vote for this I'll vote for that", etc. We should not open the doors to that thing. As it now exists, these judges receive \$833 a month; that is about \$28 a day, Sunday included, and to my mind that is a fair salary over a period of twelve years and I believe it should not be left open to the Legislature.

PRESIDENT: Any further discussion on the amendment? Are you ready for the question?

MR. OPIE: Mr. President, I am not a lawyer, but I had occasion to look through a great many state Constitutions while I was writing some of those good proposals that I submitted to this Convention and I noticed in a great many of those Constitutions that the provision that we now have in our Constitution against the raising or lowering of salaries was contained in these other Constitutions. They must have been in there for a cause. I have heard it referred to likened to business, this business of government. Far be it from such. Business is run for profit and sometimes I think that the Government is run for other purposes, to going out of deficit.

I believe that another thing that we should not pick out in any particular class and favor that particular class. We can't make, we should not make tin gods out of our judges. The other employees in this state are affected by economic conditions just the same as the judges are and I think more so because they don't have such elaborate salaries. I think that we are a little hasty on this section. The Committee gave nine months of thought and work on this section that is reported out by the Committee and for some reason, which I am not familiar with, this substitute section has been brought in here and if it had been brought in by anybody besides

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my friend Dick Righter, I think there might have been some "log-rolling" to carry it on, but I know Dick wouldn't do that, so I think he wants to give the judges more money, but I think it would be a serious mistake for us to tear down and take out the old Constitution provisions protecting the public interest. Some system should be worked out where an injustice could be corrected, but this is not the proper system in my mind. If it is good to raise a salary on account of economic conditions, then it is proper to lower them for the same reason and I think it would be a serious mistake to hastily adopt this section. It ought to have more thought and more study because I think we will have a reaction from this state if we do adopt it and pick out a certain class to favor.

MR. FORD: Mr. President, now, Mr. President, there is a reason for excepting judges from having their salaries lowered during their continuance in office and in my judgment a good and valid reason. The government of the State of Missouri is divided into three departments, the judicial, the executive and the legislative, and it is expressly provided in the Constitution that the magistracy of one department shall not perform the functions of either of the others, the purpose being to make these three departments absolutely independent of each other.

Now, the judiciary has nothing whatever to do with legislation. So far as legislation is concerned, the judiciary is as helpless as a baby. Consequently if the other two departments who do have the legislative functions could reduce the salary of the judges to absolutely nothing, they could compel the judiciary department to practically surrender its authority to their domination and that is the reason for providing in the Constitution that their salaries cannot be decreased during their terms of office. The purpose is to make them independent of the legislative and the executive departments.

I am not certain that I understand Mr. Garten in what he said. If he said that the federal government provides that the salary can neither be increased nor diminished, then he is mistaken because the federal constitution provides that the salaries shall not be decreased but does not prevent its being increased. Is that what he said? Well, I misunderstood him then. He perhaps referred to the state constitution and not to the federal, but that's correct and it was done for that very reason, to make the judiciary independent of the legislative and the executive. Of course, there is no reason for making any such provision with reference to the legislative department because it has the law-making function. The executive department can protect itself because the Governor has the veto power over all legislation and therefore it is not necessary to make the executive department independent of the legislative because he is independent of the legislative, but that's not true of the executive and that's the reason for making that provision.

Now, if you put in the provision that the salary, the compensation cannot be decreased, you then make it necessary for the Legislature to exercise its ingenuity as it has in the past and find some way to get around that provision of the Constitution as it always has done and will do in the future if you put it in there.

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Personally I would much rather put the Legislature on its own honor and say, "You can do this if you think it is right, but if you don't think it is right, then don't do it". If you put it in there and say, "You shan't do it", and they can find some way to get around it, their conscience don't hurt them any because they are still obeying the Constitution. That is what they have been doing in the past and that is what they will do in the future. I don't like that sort of provision in the Constitution. I'd rather treat the Legislature as if they were an honorable body, at least as if we thought they were, and in my judgment they will come near being so, but you could accomplish nothing by putting that provision in it. The other you do; it is put in there for the purpose of making the Legislature independent and it should be maintained. I am opposed to Mr. Tee's amendment.

PRESIDENT: Is there further discussion on the amendment? Are you ready for the question? Mr. Tee, would you like to close?

MR. TEE: Please. I want first to call your attention again to the language in the Committee Report on this particular point which reads as follows: "No judges salaries shall be increased or diminished during the term of office." I believe that we should stay by this Committee Report. This substitute of course will wipe out one of I think of the most important parts of that safeguard in the Committee Report.

Now, I want first to reply to Governor Park's remarks referring to certain things I had said as being invincible. I do not concur in his conclusion or his criticism of those remarks, although I accept them kindly. Now, the language used by the gentleman from St. Louis and one of the judges of the Supreme Court means just what I said it meant or it doesn't mean anything at all because the language is as follows. We do not complain of that provision, or limitation. Rather, we favor it, but the words, "increase or" are not stricken from it - but if the words "increased or" are not stricken from the second sentence of Section 24; the only avenue left open to the judges in obtaining a salary increase will be to seek the help of the practicing bar, political organizations and other special groups in waging a statewide campaign for a constitutional amendment. Can you imagine, I am diverting from the text here, can you imagine a Non-Partisan Court or a Non-Partisan Judge appealing to political organizations to get his salary increased as they threaten they will do here? If that isn't a threat to this Convention, if it isn't coercion, then it isn't anything at all and I don't know how to understand language.

MR. MC CLUER: Will the gentleman yield?

MR. TEE: I will not yield at this time.

PRESIDENT: The gentleman will not yield.

MR. TEE: Going on, the judge says this very thing now, appealing to political organizations, to groups of lawyers and etc., to get their salaries increased. The judge sayd, "Yet that also is now forbidden in spirit at least by" - I am leaving out a few words for brevity - "by the Non-Partisan Court Plan." So that notwithstanding

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that particular act that he threatened to use, and they threaten to use is forbidden by the spirit of the present Non-Partisan Court Plan, your Constitution if you please, yet he threatens to make use of it. Isn't that threatening? If it is not, then what is it?

Now, Governor Park mentioned this in his remarks, that in view of the fact that the Legislature might from time to time increase the duties of the judges, that therefore they ought to be free to increase their compensation also. Now, I call your attention to a section which was approved a few days ago by this Convention, which I thought and understood to be a relief for the judges in that very particular and I call your attention now briefly, to Section 5 of this file No. 15.

Now you recall that that file provided that when the judges of the Supreme Appellate Courts, or any other court, that the judges of the Supreme Court or whatever authority it was, yes, the Supreme Court, might transfer and shift these judges around from court to court, to relieve them of this additional labor, so in view of that provision, provided for the judges in the Constitution as it now stands, there is no necessity for increasing their salaries under the guise that they have more work to do. Now your attention was called this morning to Section 6 of File No. 7 which prohibits the increase of compensation, or decrease of compensation. Let me see that. I have that confused. Yes, it prohibits the increase of compensation of any state, county, or municipal officer during the term of his office.

Now, if we come along over here in this section and leave that increase out, it seems to me like we are getting an amendment pretty early because here a few days ago we prevented the increase and now we're allowing it. Now, we ought to make a Constitution, write one here that will stand up more than thirty days or five or six weeks, as the case may be, and not need amendment that soon, as we are now attempting to do it.

Now, one or two of the speakers in opposition to my amendment called attention to these subterfuges that have been subject in the past to increase the salaries of judges over the state and the argument seems to run like that, that because those were subterfuges and that that was a rather foul practice in short and bluntly stating it, that therefore, we ought to legalize it or condone it by writing a provision in the Constitution that would permit it in the future. Now, if I have any reason at all, it won't work in that fashion and I am opposed to that sort of reasoning and that sort of provision being written into this Constitution.

Now you know, we have in another provision of this Constitution, the language like this and this is back in File No. 7 and that is back in File No. 7, I believe also. We said there, "that except as provided in this Constitution and subject to the rights of the resignation, all officers shall hold office for a term thereof and unless their successor or duly elected appointed qualified". Now, that's I think, a very sufficient example to safeguard, in favor of judges being imposed upon by their state, asking them to work too cheaply for them, and I ask you, all of you, did you ever hear of a judge of any court resigning from his office because

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he wasn't getting enough money? I never did and I don't think you'll ever hear of it either. I know this much, that there are men in this Convention, and I might be so immodest as to say that I am one of them, that would be glad to accept the job on the Appellate Court of this state and I am thinking about it from the monetary consideration now perhaps, but I would be glad to take the job or ten or twelve years at the salary they get on the Court of Appeals or the Supreme Court and I don't believe that I'd need any help from the Legislature to manage my financial affairs as I went along.

PRESIDENT: Will the Gentleman yield?

MR. TEE: Not at this moment please.

PRESIDENT: The gentleman does not yield.

MR. TEE: And if the people feel like the state is going to impose on them in their work on the bench they are of course at perfect right to resign at any time.

Now I believe that Mr. Storckman mentioned this. I believe he said the substance hit the certain judges and were not in position to increase their salary, but they cannot appeal to the Legislature to do so.

Now, in that connection I call your attention to the fact that in the last General Assembly, the 1943 General Assembly contained in its body, sixty-six lawyers. Now, do you suppose that, if the Circuit Judges or the Supreme Court judges or any other judges in this state would appeal to those sixty-six lawyers in this Legislature, that they might exercise considerable influence upon them in getting their salaries increased and if you do not think that would happen that way and if you think that it would not happen, then I ask you why do you want to keep that out of the section, that limitation, and allow that very privilege to your legislation? Of course that's what you want to take that limitation out for, is so that the judges can appeal to the Legislature and get their salaries increased. That's the only reason in the world and I say it's unjustified, it's unnecessary, and it's highly discriminatory against every other office in this state. I believe that's all I have to say except that I do hope that this amendment will be adopted and now I'll yield to whatever questions or remarks the gentlemen wish to make.

MR. PARK: Mr. Tee, assume that you had the plans for building a house and obtained the services of a builder to build that house according to plans at a certain price, that you had the power to change those plans materially and did change it. Would you expect him to receive the same price that was originally agreed upon?

MR. TEE: Well Governor Park, I respectfully submit that that is now a parallel situation, that the plans in this case are, but when a judge accepts the appointment or election to office on the bench, he does it with that latitude in the terms of his office.

MR. PARK: Don't you rather think that plans or the duties outlined at the time you enter into the contract with him, then you have a right to double those duties at the same pay as before, is that your logic?

MR. TEE: Well of course, that is a very part, an essential part of the vern terms of his employment when he takes his office. I think you understand that. I think the judges understand that and another answer we might say to your question is Section 5 of the Article as approved by this Convention, which allows additional help to take care of the additional duties when they come.

MR. MC CLUER: May I question Mr. Tee?

PRESIDENT: Will the gentleman yield?

MR. TEE: Yes Sir.

MR. MC CLUER: Mr. Tee, do you not think that the statement you read from the judge of the Supreme Court...

MR. TEE (Interrupting): Will you repeat that please?

MR. MC CLUER: Do you not think that the statement you read from the statement of the Supreme Judge of the Supreme Court was an interpretation that would agree with some of the statements that you made? He simply pointed out that if it would be necessary or wise to raise the salaries of the judges, that the only way it could be done, if your amendment is included in the Constitution, is by these undesirable methods. He's not threatening the Convention he is simply pointing out an obvious fact, is he not, that the only resource would be to these outside methods?

MR. TEE: Well, I am unable to construe it any other way than I interpreted the language and furthermore, he points out that that would be forbidden by the Constitution and yet he attempts to do it in the case it would be done by the judges and the law of the state.

PRESIDENT: The question is on the amendment. Are you ready for the question?

(Chorus of "Question").

PRESIDENT: As many as are in favor of the amendment, let it be known by saying "Aye"...Opposed "No". The noes seem to have it.

(There was a request for division.)

PRESIDENT: As many as are in favor please stand...opposed. 23 For, 27 Against. The amendment fails. The question is on the substitute by Mr. Righter.

(Chorus of "Question")

PRESIDENT: Are you ready for the question?

MR. PARK: Mr. President, I have an amendment.

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