

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

FILED
AUG 24 2011

Appeal No. SD 31307

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

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

92219

FILED

Relator/Appellant,

DEC 21 2011

v.

CLERK, SUPREME COURT

RANDY VERKAMP, BUD DEAN and LARRY STRATMAN,
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.

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

J. D. Baker, MBE 24881
BAKER LAW FIRM, L.L.C.
P. O. Box 565
Osceola, MO 64776
Ph (417) 646-8125
Fax (417) 646-2617
Email:
jd@bakerlawfirmllc.com
Attorney for Appellant

SCANNED

**IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT**

Appeal No. SD 31307

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

Appellant/Appellant,

v.

**RANDY VERKAMP, BUD DEAN and LARRY STRATMAN,
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.

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment on the merits, after issuance of a preliminary writ, of the Circuit Court of Phelps County, Missouri, denying Appellant's Petition for Writ of Mandamus, to require the Phelps County Commission, County Clerk and County Treasurer to establish Appellant's annual rate of compensation as a full time prosecutor at the same rate as Associate Circuit Judges and to compel payment of the amount of underpayment for the period of her term in office. The Trial Court entered Findings of Facts, Conclusions of Law, and entered a Judgment on the merits denying the Petition.

This case does not fall within the exclusive jurisdiction of the Supreme Court of Missouri, pursuant to Article V, Section 3 of the Constitution of Missouri. Therefore, this case is within the general jurisdiction of the Missouri Court of Appeals. This case was filed and the trial conducted in Phelps County, Missouri, and pursuant to **§477.060, RSMo.**, venue lies within the Southern District.

STATEMENT OF FACTS

This is an appeal from a judgment on the merits denying Appellant's Petition for Writ of Mandamus to compel the Phelps County Commission to establish her rate of compensation at the same rate as Associate Circuit Judges and to compel payment of the amount of underpayment during her term of office.

The facts in this cause are undisputed. The facts pled in the Petition (*LF 8-11 & App 6-9*) and admitted in the Answer (*LF 39-40 & App 22-23*) are as follows:

At the time of the filing of the Petition for Mandamus, the Appellant was the duly elected Prosecuting Attorney for Phelps County, Missouri. Her term of office began on January 1, 2007, and extended through December 31, 2010. The Respondents were the duly elected and serving County Commission, County Clerk and Treasurer for Phelps County.

The position of Prosecuting Attorney for Phelps County, Missouri, is a full time position as defined by §56.265.1(1) *RSMo*. The salary of a full time Prosecuting Attorney has been established by §56.265.1(1) as the same salary as that for an Associate Circuit Judge. The salary for an Associate Circuit Judge, pursuant to Article XIII, Section 3, is established by the Missouri Citizens' Commission on Compensation for Elected Officials and in its report dated December 1, 2006, established the salary of Associate Circuit Judges beginning July 1, 2007, at the amount of \$101,088.00 per year plus a \$2,000.00 increase as a "differential reduction increase" plus 3% Fiscal Year 2008 State Employee

raise in the amount of \$3,092.00, which established their salary beginning July 1, 2007, at the rate of \$106,181.00 per year. Additionally, Associate Circuit Judges received a 3% Fiscal Year 2009 State Employee raise that established their salary effective as July 1, 2008, at the rate of \$109,366.00. *(Exhibits 1 & 2, LF 13-22 & App 11-20)*

After July 1, 2007, Respondents continued to pay Appellant compensation at the rate of \$96,000.00 per year through the end of her term on December 31, 2010, and did not pay Appellant at the increased compensation level approved for Associate Circuit Judges, pursuant to the Commission for Elected Officials Report for the period beginning July 1, 2007. The difference between the salary paid Appellant and the salary she would have received if paid pursuant to the Commission Report is \$43,715.98. *(Exhibit 4, LF 38 & App 21)*

POINTS RELIED ON

Point I

The trial court erred in denying Appellant's petition for a writ of mandamus to compel the Respondents to compensate her at the statutory rate established by §56.265.1 (1) for fulltime prosecuting attorneys and erred in interpreting and declaring that Article VII, Section 13 of the Missouri Constitution prohibited a midterm increase in compensation for fulltime prosecuting attorneys because §56.265.1 (1) is an exception to the constitutional prohibition in that it statutorily fixes the method of determining the prosecutor's salary, although not stating an amount, and this statutory method was enacted prior to Appellant's term of office.

State ex rel. Moss v. Hamilton, 303 Mo. 302, 260 S.W. 466 (Mo banc 1924)

Laclede County v Douglas, et. al., 43 S.W.3d 826, 828 (Mo. 2001)

§56.265.1 RSMo.

Article XIII, §3 Missouri Constitution

Missouri Attorney General Opinion Number 123-2001

ARGUMENT

Point I

The trial court erred in denying Appellant's petition for a writ of mandamus to compel the Respondents to compensate her at the statutory rate established by §56.265.1 (1) for fulltime prosecuting attorneys and erred in interpreting and declaring that Article VII, Section 13 of the Missouri Constitution prohibited a midterm increase in compensation for fulltime prosecuting attorneys because §56.265.1 (1) is an exception to the constitutional prohibition in that it statutorily fixes the method of determining the prosecutor's salary, although not stating an amount, and this statutory method was enacted prior to Appellant's term of office.

* * *

Standard of Review

This is a mandamus action to compel payment of a prosecuting attorney's salary at the rate established by statute. A preliminary writ was issued and a judgment on the merits was rendered in a court tried case based on uncontested facts. As a final judgment on the merits of an application for an extraordinary writ after issuance of a preliminary writ, it is subject to direct appeal. *State ex. rel. National Supermarkets, Inc. v Dowd*, 1 S.W.3d 595 (Mo. App. E.D. 1999)

Appellant challenges the trial court's finding that the establishment and payment of Appellant's rate of compensation at an increased level during her term of office was

prohibited by *Article VII, Section 13 of the Missouri Constitution* barring salary increases during the term of office. Appellant contends that the trial court has erroneously declared and applied the law. The judgment of the trial court should be reversed if there was no substantial evidence to support the judgment, the judgment was against the weight of the evidence, the judgment erroneously declared the law, or the judgment erroneously applied the law. *Murphy v. Carron, 536 S.W.2d 30 (Mo banc 1976)*

* * *

At the time of the filing of the Petition herein, and through December 31, 2010, Appellant was the full time prosecuting attorney for Phelps County, Missouri. This dispute arises over the salary of the Appellant from July 1, 2007, through the end of her term.

The Prosecuting Attorney's position for Phelps County, Missouri, is a full time position. *§56.265.1 RSMo.*, establishes the compensation of a full time Prosecuting Attorney at a sum equal to the compensation of an Associate Circuit Judge.

Pursuant to *Article XIII, §3 of the Missouri Constitution*, the salary of an Associate Circuit Judge is established by Missouri Citizens' Commission on Compensation for Elected Officials. In the report filed by the Citizen's Commission on Compensation dated December 1, 2006, the salary for an Associate Circuit Judge was established as of July 1, 2007, at the rate of \$106,181.00 per year and as of July 1, 2008, at the rate of \$109,366.00 per year. During her term, Appellant's rate of compensation, as

approved and paid by the County Commission was \$96,000.00. The County Commission refused to recognize the higher rate of compensation established by the Citizen's Commission on Compensation and to approve and pay the salary as established by that Citizen's Commission. The County Commission took the position that a midterm increase in the Prosecuting Attorney's salary violates the constitutional prohibition of *Article VII, Section 13*, that "the compensation of State, County and Municipal officers shall not be increased during the term of office; . . ." The trial court upheld the position of the County Commission in its judgment and found that although a midterm increase in the salary of Associate Circuit Judges is permissible, a midterm increase in the salary of a full time prosecuting attorney is not. (*LF 48- 52 & App 1-5*)

In *Laclede County v Douglas, et. al.*, 43 S.W.3d 826, 828 (Mo. 2001) the Supreme Court held that "Despite its plain language, the Constitutional prohibition against midterm increases in compensation are not absolute." Although finding that the midterm increase for the county commissioners in that instance was not permitted, the Court recognized exceptions to the prohibition, including the exception noted in *State ex rel. Moss v. Hamilton*, 303 Mo. 302, 260 S.W. 466 (Mo banc 1924), which permitted a midterm increase resulting merely from the application of a statutory method for calculating compensation, where the method was enacted before the officer was elected. In the instant case, the statutory language of §56.265 for establishing the compensation of full time prosecuting attorneys was in place before Appellant began her term on January

1, 2007.

First of all, it is well to note that *Article 13, Section 3 of the Missouri Constitution* providing for the establishment of compensation for state officials, including Judges, was adopted at the general election of November 8, 1994. That section was amended at the general election of November 7, 2006, by changing the capitalization of the word “Citizen’s” in subsections 1 and 2, deleting the phrase ‘subject to appropriations’ in subsection 8, and adding subsections 12 and 13, none of which amendments are of any significance to the instant case. However, of particular significance to this case, subsection 8 provides that the Missouri Citizen’s Commission on Compensation for Elected Officials “shall, beginning in 1996, and every two years thereafter, study the relationship of compensation to duties . . . and shall fix the compensation for each respective position. . .” The salaries so established, if not disapproved by the General Assembly, become effective on July 1 of the following year. Being covered by this section, the salaries of Judges, including Associate Circuit Judges, are fixed every two years.

Similarly, the provision of *§56.265.1 (1) RSMo.* establishing that “For a full-time prosecutor the prosecutor shall receive compensation equal to the compensation of an associate circuit judge;. . .” was adopted by a 1997 amendment to that statute. *§56.265* has been amended since that date, but Appellant cannot find that there has been any amendment to the specific language setting the compensation of full time prosecutors

since its inception in the 1997 amendment.

Appellant submits that the history of the enactment of these two provisions, one Constitutional and one statutory, is doubly significant in the instant case. First of all, the Constitutional method for establishing the salary of Associate Circuit Judges by the Citizen's Commission was in effect at the time of the statutory enactment tying the prosecutor's salary to the salary of Associate Circuit Judges. Tying the prosecutor's salary to the salary of Associate Circuit Judges, whose salary can be increased midterm, presumes a legislative intent or awareness of enacting a statutory method that could result in midterm increases for prosecuting attorneys. The statute does not limit the possible increases to the end of a term. Therefore, 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, as drafted, it permits midterm increases.

As mentioned above, the additional significance of the history of the **Article 13, Section 3** and **§56.265** for the instant case is that the relevant provisions of each section were enacted prior to January 1, 2007, the beginning of the Appellant's term of office as a full time prosecutor.

Appellant submits that the trial court erred in distinguishing the **Moss** case from the instant case. In **Moss**, the Relator was the circuit clerk of Crawford County. His term of office was for four years beginning on January 1, 1919, and extending through

December 31, 1922. By statute, the salary of the circuit clerk was tied to the population of the county and the population figure used was established by applying a multiplier to the number of votes cast in the presidential election. The statute establishing the method of calculating the circuit clerk's salary in this manner was enacted in 1915. At the beginning of his term, the Relator was entitled to a salary of \$1,600.00 per year. After the Presidential election of the 1920, applying the multiplier to determine population, he was entitled to a salary of \$1,950.00 per year for the last two years of his term. A copy of the opinion is included in the Appendix herein. *App 24-31*

At *260 S.W. 469 and 470*, the Supreme Court engaged in a rational discussion of the statute and stated that the legislature evidenced an intent to tie the salary of the circuit clerks to a population figure determined by the vote in the Presidential elections and were well aware that the salary could be adjusted, either up or down, based upon that vote. The Court held that as enacted, the statute fixed the salaries by law, not by a stated amount but by a statutory method or formula. The Court held that if the formula was in place, then the salary was fixed for the whole term pursuant to that method or formula, even though not named in dollars and cents for the whole term. The Court approved a midterm increase in the salary for a Circuit Clerk and required the County to pay the unpaid salary. Appellant would submit that in the instant case, the salary of a full time prosecutor is fixed for the whole term, not in amount, but by a statutory method tied to the findings of the Citizen's Commission that correlates the relationship of duties to compensation.

Based on *Moss* and the rationale of *Moss*, the Attorney General has previously issued its *Opinion Number 123-2001*, supporting the position that a prosecuting attorney's salary can be increased midterm when the position increased to a full time position as a result of a change in the status from a third to a first class County during the term of office for the Prosecuting Attorney. A copy of that opinion is also attached hereto for review. *App 32-33*

In the instant case, it is clear that the method establishing the rate of compensation for a full time prosecuting attorney was in place prior to the term of the Appellant, which extended from January 1, 2007, until December 31, 2010. Under that method as established by *§56.265*, her salary should have increased from \$96,000.00 to \$106,181.00 on July 1, 2007, and to \$109,366.00 as July 1, 2008. Payment of the statutory salary for a full time prosecutor is a ministerial act, not subject to discretion. Therefore, the refusal of the Respondents to approve and pay the increased midterm salary is in violation of the statutory mandates and a Writ of Mandamus should have issued to compel the Respondents to approve, issue vouchers therefore, and pay the salary as established by law, including the back pay. See *Moss, supra*.

CONCLUSION

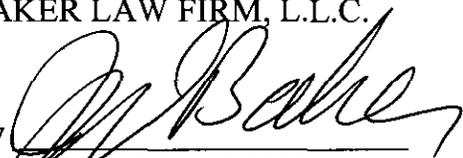
Pursuant to §56.265 *RSMo.*, the salary of a full time prosecuting attorney has been established in an amount equal to the salary for Associate Circuit Judges. The salary for Associate Circuit Judges increased from \$96,000.00 to \$106,181.00 on July 1, 2007, and to \$109,366.00 as July 1, 2008. The Respondents failed to pay Appellant at the statutory rate and underpaid her in the amount of \$45,715.98. The Writ of Mandamus should have issued compelling payment in this amount to the Appellant. The Trial Court erred in finding that payment in the statutory amount violated the provisions of the Missouri Constitution, Article VII, Section 13, and its judgment should be reversed and a judgment should be entered making the Writ absolute to compel payment of the amount sought as an underpayment.

REQUEST FOR ORAL ARGUMENT

Appellant requests oral argument.

Respectfully Submitted,

BAKER LAW FIRM, L.L.C.

By 

J. D. Baker, MBE 24881

P. O. Box 565

Osceola, MO 64776

Ph (417) 646-8125

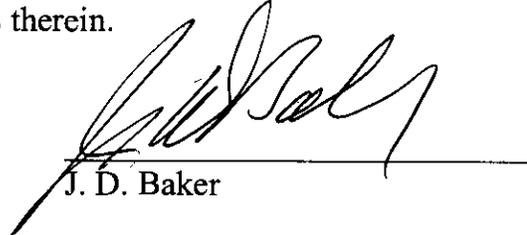
Fax (417) 646-2617

Email: jd@bakerlawfirmllc.com

Attorney for Appellant

**CERTIFICATION REGARDING TYPE SIZE, FONT, NUMBER OF
WORDS AND VIRUS SCANNED DISK**

The undersigned certifies that his Brief was prepared using a Word word processing format, proportional 13 point Times New Roman font type, contains 3667 words, and the accompanying disk of the Brief has been scanned for viruses using a current AVG virus scan, which detected no viruses therein.



J. D. Baker

CERTIFICATE OF SERVICE

The undersigned certifies that two copies of Appellant's Brief and a floppy disk with the Brief prepared using Microsoft Office Word word processing, has been served by U. S. Mail, postage prepaid, this 22nd day of August, 2011, upon the following counsel for Respondent and party:

Mr. Brendon Fox
Assistant Prosecuting Attorney
Phelps County Courthouse
200 N. Main, Suite G69
Rolla, MO 65401
Attorney for Respondent



J. D. Baker

APPENDIX

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IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
CIRCUIT DIVISION

FILED

APR 20 2011

SUE BROWN
CIRCUIT CLERK
PHELPS COUNTY, MO.

State of Missouri, ex rel.,)
COURTNEY GEORGE,)
Relator,)
)
v.)
)
RANDY VERKAMP, BUD DEAN, and)
LARRY STRATMAN, as duly elected)
and serving Commissioners of Phelps)
County, Missouri, County Commission,)
CAROL BENNETT, as duly elected and)
serving County Clerk of Phelps County,)
Missouri, and CAROL GREEN, as the)
duly elected and serving Treasurer of)
Phelps county, Missouri,)
Respondents.)

Case No.: 10PH-CV02079

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this day, the Court takes up the above cause, and having reviewed the file, the pleadings, and the suggestion provided by the parties, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On the date of filing the petition herein, Relator, Courtney M. George, was the duly elected Prosecuting Attorney for Phelps County, Missouri. She was elected to office on November 7, 2006 and her term began January 1, 2007 and ended December 31, 2010.

2. On the date of filing the petition herein, Respondents Randy Verkamp, Bud Dean, and Larry Stratman, were the duly elected and serving commissioners of the County Commission of Phelps County, Missouri, with Respondent Verkamp serving as the presiding commissioner. Respondent Carol Bennett was the duly elected and serving

County Clerk of Phelps County, Missouri. Respondent Carol Green was the duly elected and serving Treasurer of Phelps County, Missouri.

3. The position of Prosecuting Attorney for Phelps County, Missouri, is a full time position as set forth in § 56.265.1(1) RSMo.

4. The salary of a full time Prosecuting Attorney has been established by § 56.265.1(1) RSMo as the same as an Associate Circuit Judge.

5. Article XIII, Section 3, states that the salary for Associate Circuit Judges is to be set by the Missouri Citizens' Commission on Compensation for Elected Officials. The salary for both Prosecuting Attorneys and Associate Circuit Judges was \$96,000.00 until July 1, 2007. In its report dated December 1, 2006, the Citizens' Commission set the salary for Associate Circuit Judges beginning July 1, 2007 at \$101,088.00 per year plus a \$2,000.00 increase as a "differential reduction increase" plus 3% Fiscal Year 2008 State Employees raise in the amount of \$3,092.00 which established their salary beginning July 1, 2007, at the rate of \$106,181.00 per year. Additionally, Associate Circuit Judges received a 3% Fiscal year 2009 State Employee raise that established their salary beginning July 1, 2008, at the rate of \$109,366.00 per year.

CONCLUSIONS OF LAW

Article VII, Section 13 of the Missouri Constitution states "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* Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo.1956) (raise deemed impermissible because

no additional duties, extrinsic or not germane to the office, were imposed in conjunction with the increase in compensation); 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.

Extra consideration was given to Moss because the Relator relied heavily on it. Moss states that the raise was permissible “because his salary was fixed by law before his election.” Unlike in Moss there was no formula for prosecutorial pay prior to Relator’s election, rather there is § 56.265.1 RSMo, which states that “a full-time prosecutor shall receive compensation equal to the compensation of an associate circuit judge.” This then requires a review of Article XIII, Section 3 which establishes the mechanism for setting associate circuit judge pay. The salary is then determined by the Missouri Citizens’ Commission on Compensation for Elected Officials in their report of December 1, 2006 which is set forth above. There are no rules or formula regarding how the Commission is to set the salaries. Because Relator was elected on November 7, 2006 and the Missouri Citizens’ Commission on Compensation for Elected Officials report setting associate circuit judge pay was filed on December 1, 2006, the “formula” for the salary was not in place as it was in Moss.

While the midterm pay increase for prosecuting attorneys is unconstitutional, the midterm pay raise of associate circuit judges is not. The provision specifically pertaining to judges' salaries is Article V, Section 20 which states, "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. No judge shall receive any other or additional compensation for any public service. No supreme, appellate, circuit or associate circuit judge shall practice law or do law business. Judges may receive reasonable traveling and other expenses allowed by law."

At first blush it would seem that Article V, Section 20 and Article XIII, Section 3 are in conflict. Article V, Section 20 deals specifically with the compensation of judges while Article XIII, Section 3 deals generally with the compensation of all state, county, and municipal officers. It is a well recognized principle of constitutional construction that specific provisions should prevail over general provisions when they affect the same matter. *See State ex rel. Gordon v. Becker*, 49 S.W. 2d 146 (Mo. 1932). Again, it is clear that Article V, Section 20 deals specifically with the compensation of judges while Article XIII, Section 3 deals generally with the compensation of all state, county, and municipal officers; of which associate circuit judges would be a member. Therefore any conflict arising between Article V, Section 20 and Article XIII, Section 3 would have to defer to Article V, Section 20.

Even so, looking at the intent of the framers shows that midterm pay raises for associate circuit judges was considered and ultimately permitted.

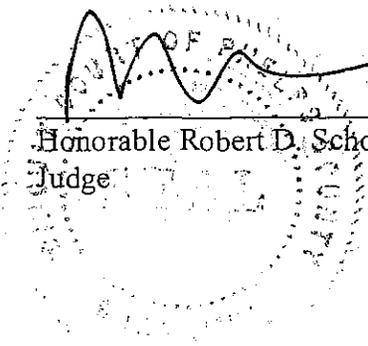
In examining the transcripts of the Constitutional Convention of 1945, specifically dealing with Article V, Section 24, which is the predecessor to today's

Article V, Section 20, it is clear that the framers intended to permit judges to receive raises during their terms. Specifically, there was 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 Commission, to decide whether judges deserve raises during their terms. (For full debate, see Constitutional Convention Debates of 1945, pages 2738-2751).

In conclusion, the midterm raise given to the judiciary by the Commission in 2007 and 2008 is constitutional because Article V, Section 20 deals specifically with judicial salaries and the framers specifically intended an exception to the general rule set forth in Article VII, Section 13. Similarly, Article VII, Section 13 prohibits the raise sought by Relator, because none of the exceptions set forth in Laclede County apply. Specifically, Moss does not apply because there was not a formula in place prior to Relator's election of November 7, 2006.

WHEREFORE, judgment is entered in favor of Respondents and against Relator. Temporary order in mandamus is herein quashed and costs are taxed against the Relator.

Honorable Robert D. Schollmeyer
Judge



4-20-11
Date
CLERK OF COURT
COURT HOUSE
ST. LOUIS, MISSOURI

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
CIRCUIT DIVISION

FILED

NOV 18 2010

SUE BROWN
CIRCUIT CLERK
PHELPS COUNTY, MO

State of Missouri, ex rel.,)
COURTNEY M. GEORGE,)
)
Relator,)
)
v.)
)
RANDY VERKAMP, BUD DEAN and)
LARRY STRATMAN, 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.)

Case No.: 10PH-CV02079

Service Instructions:

Randy Verkamp
Presiding Commissioner
Phelps County Courthouse
200 N. Main Street
Rolla, Phelps County, MO 65401

Carol A. Bennett
County Clerk
Phelps County Courthouse
200 N. Main Street, Suite 101
Rolla, Phelps County, MO 65401

Bud Dean
District 2 Commissioner
Phelps County Courthouse
200 N. Main Street
Rolla, Phelps County, MO 65401

Carol Green, Treasurer
Phelps County Courthouse
200 N. Main Street, Suite 125
Rolla, Phelps County, MO 65401

Larry Stratman
District 1 Commissioner
Phelps County Courthouse
200 N. Main Street
Rolla, Phelps County, MO 65401

PETITION FOR WRIT OF MANDAMUS

COMES NOW Relator, Courtney M. George, and for her Petition for Writ of Mandamus, states:

1. Relator, Courtney M. George, is the duly elected Prosecuting Attorney for Phelps County, Missouri, and her current term of office began on January 1, 2007, and extends until December 31, 2010.

2. Respondents, Randy Verkamp, Bud Dean and Larry Stratman, are the duly elected and serving commissioners of the Phelps County, Missouri, County Commission, with Respondent, Randy Verkamp, serving as the duly elected Presiding Commissioner.

3. Respondent, Carol A. Bennett, is the duly elected and serving County Clerk of Phelps County, Missouri.

4. Respondent, Carol Green, is the duly elected and serving Treasurer of Phelps County, Missouri.

5. The position of Prosecuting Attorney for Phelps County, Missouri, is a full time position as defined by §56.265.1(1).

6. The salary of a full time Prosecuting Attorney has been established by §56.265.1(1) as the same salary as that for an Associate Circuit Judge.

7. The salary for an Associate Circuit Judge, pursuant to Article XIII, Section 3, is established by the Missouri Citizens' Commission on Compensation for Elected Officials and in its report dated December 1, 2006, established the salary of Associate Circuit Judges beginning July 1, 2007, at the amount of \$101,088.00 per year plus a \$2,000.00 increase as a "differential reduction increase" plus 3% Fiscal Year 2008 State Employee raise in the amount of \$3092.00 which established their salary beginning July 1, 2007, at the rate of \$106,181.00 per year.

Additionally, Associate Circuit Judges received a 3% Fiscal Year 2009 State Employee raise that established their salary effective as July 1, 2008, at the rate of \$109,366.00. A copy of the Citizen's Commission Report is attached hereto as Exhibit 1 and a summary of the increase is included on Exhibit 2 in Relator's attached list of Exhibits.

8. Respondents Verkamp, Dean and Stratman, as the County Commission for Phelps County, have refused to budget and approve Relator's salary, pursuant to the Commission for Elected Officials Report for the period beginning July 1, 2007, through the present date at the rate established by the Commission for Elected Officials Report but have continued her salary at its pre-July 1, 2007 level of \$96,000.00 per year.

9. The approval and payment of Relator's salary at the level as established by statute and by the Citizen's Commission for Elected Officials report is a ministerial duty, not subject to discretion by the Respondents herein.

10. The Respondents Verkamp, Dean and Stratman have refused to approve and direct the Respondent Bennett, to issue vouchers in the amount of the proper salary for payment by the Respondent Green.

11. As a result of the refusal to approve Relator's salary in the proper amount, the Relator has been underpaid for period from July 1, 2007, through the present date, prior to the issuance of an order of mandamus herein.

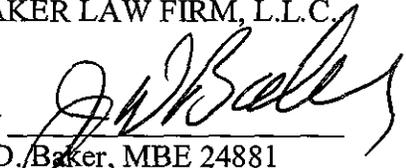
12. The amount of the underpayment to the Relator for the period beginning July 1, 2007, through the current date is \$42,582.15, all as is shown by attached Exhibit 3.

13. Relator's Suggestions in Support of this Petition are attached hereto.

14. Relator's Exhibits are listed and attached hereto and incorporated herein, the same as if fully set forth.

WHEREFORE, Relator, Courtney M. George, requests that a preliminary order in mandamus be issued by this Court commanding Respondents to file an answer directed to this petition, or in default thereof, to issue its order directing the Respondents Verkamp, Dean and Stratman to approve the salary of the Relator for the period beginning July 1, 2007 through 2010, at rate of \$106,181.00 per year and for the period beginning July 1, 2008 through 2010 at the rate of \$109,366.00 per year, directing the Respondent Bennett to issue vouchers for payment of the correct salary amount for all remaining months of 2010 and additionally for the sum of \$42,582.15, the amount of the underpayment for 2007, 2008, 2009 and 2010 to date, and directing the Respondent Green to honor and pay the vouchers issued for the remaining months of 2010 and the amount of \$42,582.15 for the underpayment for 2007, 2008, 2009 and 2010 to date.

BAKER LAW FIRM, L.L.C.

By 

J. D. Baker, MBE 24881

P. O. Box 565

Osceola, MO 64776

Ph (417) 646-8125

Fax (417) 646-2617

Email: jd@bakerlawfirmllc.com

Attorney for Relator

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
CIRCUIT DIVISION

State of Missouri, ex rel.,)
 COURTNEY M. GEORGE,)
)
 Relator,)
)
 v.)
)
 RANDY VERKAMP, BUD DEAN and)
 LARRY STRATMAN, 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.)

Case No.:

INDEX OF
EXHIBITS TO
PETITION FOR MANDAMUS

Exhibit No.	Description	Page No.
1	Missouri Citizen's Commission on Compensation of Elected Officials Report 12-01-2006	
2	Missouri Citizen's Commission on Compensation of Elected Officials Report 12-01-2006 Summary	
3	Summary of Underpayment of Relator's Salary	

Exhibit 1

APPENDIX G
SCHEDULE OF COMPENSATION

1157



Missouri Citizens' Commission on Compensation for Elected Officials

November 30, 2008

The Honorable Robin Carnahan
Secretary of State
800 West Main
Jefferson City, Missouri 65102

Dear Secretary of State Carnahan:

Article XII, Section 3 of the Missouri Constitution requires that the Missouri Citizens' Commission on Compensation for Elected Officials file a report no later than December 1. The Commission's report is attached and contains the schedule of compensation required.

Sincerely,

Handwritten signature of Jack Pohrer in cursive.

Jack Pohrer
Chairperson

1158

**APPENDIX G
SCHEDULE OF COMPENSATION****Missouri Citizens' Commission on Compensation for Elected Officials**

November 30, 2006

TO: The Honorable Secretary of State
Robin Carnahan
600 West Main and 208 State Capitol
P.O. Box 778
Jefferson City, Missouri 65102

TO: Revisor of Statutes
Patricia L. Buxton
c/o Director of the Committee on Legislative Research
117-A State Capitol
Jefferson City, Missouri 65101

FROM: Jack Pohrer
Chairman
Missouri Citizens' Commission on Compensation for Elected
Officials

Dear Madam Secretary:

Pursuant to Article XIII, Section 3 of the Constitution of the State of Missouri, I herewith submit and file with your office the report and compensation schedule of the Citizens' Commission on Compensation of Elected Officials. Please see attached the list of the members of the Commission.

We who have had the honor and privilege of serving on this Commission have assumed our duties and responsibilities and have, in the short time allowed for the work of the Commission, made every effort to propose a compensation plan that will address the difficult situation that has existed since 2000 and will address the concerns of those to whom we have a responsibility and an obligation.

Our first allegiance must be to our fellow citizens of Missouri, who have a right to expect a government that attracts the finest public servants with compensation levels that are reasonable, fair, and consistent with the entire government workforce and within the financial means of the State.

We also have an obligation to Governor Matt Blunt who has the responsibility of managing and directing the state's affairs and allocating the scarce resources of the State.

Revised Statutes of Missouri 2007

A12

APPENDIX G
SCHEDULE OF COMPENSATION

1159

The Missouri General Assembly must appropriate the financial resources of the State, and we have an obligation to consider carefully the very difficult responsibility this process entails. While we are charged with the responsibility of seeking to establish adequate compensation levels for the leaders of the State, we must also be mindful of the impact our decisions will have, not only on the state budget itself, but also with respect to the general impact our decisions can have on compensation paid regular state employees.

The Commission has the direct and primary obligation to those public servants that fall under the Commission's jurisdiction. In recent years the benefit of a Citizens' Commission has not been apparent to very many and as a result those public servants who can only be compensated under the schedules of these Commissions have endured six consecutive years of no increase whatsoever, while the consumer price index nationwide has advanced in excess of 20%. The Commission is cognizant that its schedule is subject to review by the General Assembly and has adopted a schedule it believes is reasonable under the circumstances and not inconsistent with other demands and obligations of the State.

Finally, the Commission feels a strong obligation to the dedicated members who served on the previous Commissions and whose many donated hours and investment of thought and deliberation did not always yield a positive result. We applaud the work of these fellow Commissioners and bring to our current task their history and experiences.

The Commission's organizational meeting occurred on November 20th, with a report due on December 1st. The Commission set its hearing schedule and proceeded with four public hearings in Jefferson City, Kansas City, St. Louis and Cape Girardeau. A number of witnesses appeared at each hearing and substantial information and recommendations were received. Any citizen or recipient of this report may contact the Office of Administration to obtain additional information with regard to these public hearings.

While there is great sentiment among some members of the Commission to forge ahead and simply set salaries where we sincerely believe they should be to attract the best and brightest to public service, we are constrained by our determination to prudently address inequities and present a plan that meets the objectives of the Governor and General Assembly in the allocation of scarce state resources over a period of time.

We have, therefore, with the goal in mind of submitting a reasonable and fair schedule, agreed to a plan that is basically corrective in nature. In the six years since 2000, the General Revenue budget has seen major reductions in all operating areas and the issue of government salaries has been, by necessity, bypassed in favor of ongoing state obligations and emergency needs. As a consequence of this belt tightening, the General Assembly appropriated increases for all state employees only twice. In 2003, each employee received a \$1200 increase and, in 2006, each employee received a 4% increase.

APPENDIX G
SCHEDULE OF COMPENSATION

The schedule of this Commission calls for a catch-up program for the officials under our jurisdiction whereby they each receive the same increases allowed other state employees during the period 2000 to 2006.

Under the provisions of Amendment 7, passed overwhelmingly by the electorate this November, no member of the General Assembly is to receive any increase until January 2009. Accordingly, the catch-up provisions in the schedule for the executive and judicial branches will be held in abeyance for the General Assembly until January 2009. The Commission's schedule does, however, include the recommendation of previous Commissions that the per diem expense allowance for all members of the General Assembly continue to be set at 80% of the federal per diem.

The Commission is submitting two additional provisions as part of its schedule.

First, for the Fiscal Years beginning in July 2007 and July 2008, any increase in the salary of the average state worker shall be applied to the executive and judicial offices under the Commission's jurisdiction, and beginning in January 2009 the General Assembly shall receive the same increases. For purposes of the Commission's schedule, the "salary of the average state worker" is determined by the pay plan applicable to other state employees generally with all fixed amounts converted to the percentage increase for the average state employee.

Second, each Associate Circuit Judge shall receive a one-time payment of \$2,000 to partially compensate for the Circuit Court duties currently being assumed by Associate Circuit Court Judges throughout the state. The Commission believes that it is in the best interests of the judiciary that the gap between Circuit and Associate Circuit Judges be gradually reduced until full recognition of the increased duties of Associate Circuit Judges is achieved in the level of compensation provided for that office.

In addition to the Commission's schedule, the Commission submits these additional comments and suggestions:

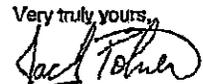
- 1) The state judiciary is currently undergoing critical review and analysis under the direction of the Supreme Court. The issue of allocation of judicial resources and judicial manpower will be reviewed and statutory or constitutional changes pertaining to the judiciary may result. These are issues that may affect compensation levels and may affect the distribution of workload among all judges. The Commission has not acted on future possible changes in this regard but believes that future Commissions will find these reports and changes useful in determining adequate judicial compensation.
- 2) The issue of legislative compensation is very complex and future Commissions may wish to address the basic concept of whether these offices have become full-time positions, considering the annual duties and responsibilities that require legislative attention both in the Capitol and in the legislative districts when the General Assembly is not in general session.

APPENDIX G
SCHEDULE OF COMPENSATION

I also want to publicly express my appreciation to the Office of Administration for the great assistance provided by Deputy Commissioner Rich AuBuchon and his assistant Sara VanderFeltz. They kept us on schedule and were of invaluable assistance.

I will conclude by saying that it has been a great privilege and honor to have served on this Commission and to have served with such a distinguished, dedicated and diverse group of Missouri citizens. The Constitution adopted by the citizens of this state gave the responsibility of determining the salaries of elected officials to this Citizens' Commission, and we have discharged our responsibilities to the best of our ability.

We thank our fellow citizens for this opportunity to be of service to our great state.

Very truly yours,

Jack Polver

1162

**APPENDIX G
SCHEDULE OF COMPENSATION**

**COMPENSATION SCHEDULE
APPROVED BY THE
CITIZENS' COMMISSION ON COMPENSATION
FOR ELECTED OFFICIALS**

SUMMARY

The following chart summarizes the Commission's recommendations:

OFFICE	CURRENT	+ \$1,200	+ 4%	+ \$2,000 Adjustment for Associate Circuit Judges Only	+ Any increase in the salary of the average state worker beginning 7-1-07	+ Any increase in the salary of the average state worker beginning 7-1-08
Governor	120,087	121,287	126,138			
Lt. Governor	77,184	78,384	81,519			
Attorney General	104,332	105,532	109,753			
Other Statewide	96,455	97,655	101,561			
Legislators*	31,351	32,551	33,853			
Supreme Court	123,000	124,200	129,168			
Court of Appeals	115,000	116,200	120,848			
Circuit Judge	108,000	109,200	113,568			
Associate Circuit Judge	98,000	97,200	101,088	103,088		

*Legislators receive no increase until January 1, 2009

I. FOR STATEWIDE ELECTED OFFICIALS BEGINNING JULY 1, 2007

The salary is increased by the \$1,200 and 4% pay increases granted to state employees in recent years.

In addition to the salary specified in the above table, the salary for each statewide elected official shall be increased for the Fiscal Years beginning in July 2007 and July 2008, to the same extent the salary of the average state worker is increased.¹

¹ For purposes of the Commission's schedule, the "salary of the average state worker" is determined by the pay plan applicable to other state employees generally with all fixed amounts converted to the percentage increase for the average state employee.

APPENDIX G
SCHEDULE OF COMPENSATION

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To the extent statewide elected officials are entitled to receive any mileage reimbursement, they shall receive the same rate determined by the Office of Administration to reimburse state employees.

II. FOR LEGISLATORS

A. UNTIL JANUARY 1, 2009

The compensation payable to Legislators shall be that being paid on December 1, 2008.

B. ON AND AFTER JANUARY 1, 2009

Effective January 1, 2009, the salary is increased by the \$1,200 and 4% pay increases granted to state employees in recent years.

On that date, in addition to the salary specified in the above table, the salary for each legislator shall be increased for the Fiscal Years beginning in July 2007 and July 2008, to the same extent the salary of the average state worker is increased.

The mileage reimbursement for each legislator shall be the rate determined by the Office of Administration to reimburse state employees.

The per diem rate shall be at 80% of the federal per diem in Jefferson City.

In addition to these amounts, a leadership differential of \$2,500 annually shall be paid to the Representative serving as Speaker of the House of Representatives and the Senator serving as President Pro Tempore of the Senate. A leadership differential of \$1,500 annually shall be paid to the Representative serving as Speaker Pro Tempore of the House of Representatives and to each Senator or Representative serving as the Majority or Minority Floor Leader of the Senate or the House of Representatives.

**APPENDIX G
SCHEDULE OF COMPENSATION**

III. FOR JUDGES BEGINNING JULY 1, 2007

The salary for each position is increased by the \$1,200 and 4% pay increases granted to state employees in recent years.

Each Associate Circuit Judge shall receive a one-time increase of \$2,000 to reduce the differential between that position and the position of Circuit Judge.

In addition to the salary specified in the above table, the salary for each Judge shall be increased for the Fiscal Years beginning in July 2007 and July 2008, to the same extent the salary of the average state worker is increased.

In addition to these amounts, a leadership differential of \$2,500 annually shall be paid to the Judge serving as Chief Justice.

To the extent Judges are entitled to receive any mileage reimbursement, they shall receive the same rate determined by the Office of Administration to reimburse state employees.

APPENDIX G
SCHEDULE OF COMPENSATION

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MISSOURI CITIZENS' COMMISSION ON COMPENSATION FOR ELECTED OFFICIALS

Ms. Erica Gonzales
St. Louis, Missouri 63134

Ms. Jean C. Brunson
St. Charles, Missouri 63301

Mr. David J. Hoelling
St. Louis, Missouri 63109

Mr. Bradley D. Stone
Dixon, Missouri 65459

Ms. Judy J. Turner
Kansas City, Missouri 64112

Ms. Janet S. Kay
Trimble, Missouri 64482

Mr. Larry A. Jackson
Reeds, Missouri 64859

Ms. Lee Anne Roux
Park Hills, Missouri 63601

Mr. Mark T. Welgarth
Hermann, Missouri 65041

Mr. Patrick Barr
Lamar, Missouri 64759

Mr. Herbert Dill
O'Fallon, Missouri 63368

Mr. Michael King
Washington, Missouri 63090

Mr. Jack Pohrer
St. Louis, Missouri 63124

Judge Paul Simon
St. Louis, Missouri 63109

Ms. Rita C. Flake
Jonesburg, Missouri 63351

Mr. Wayne A. Foster
Sumner, Missouri 64681

Mr. John A. Czuba
Macon, Missouri 63552

Mr. Robert J. Barrientos
Kansas City, Missouri 64111

Mr. David R. Henke
Moscow Mills, Missouri 63362

10. Until the first day of July next after the filing of the first schedule by the commission, compensation of the persons affected by this section shall be that in effect on the effective date of this amendment.
11. Schedules filed by the commission shall be subject to referendum upon petition of the voters of this state in the same manner and under the same conditions as a bill enacted by the general assembly.
12. Beginning January 1, 2007, any public official subject to this provision who is convicted in any court of a felony which occurred while in office or who has been removed from office for misconduct or following impeachment shall be disqualified from receiving any pension from the state of Missouri.
13. No compensation schedule filed by the commission after the effective date of this subsection shall take effect for members of the general assembly until January 1, 2009.

Missouri Citizens' Commission on Compensation 2006 Report

In 2006, following the Constitutional scheme of Article XIII, Section 3, the Missouri Citizens' Commission on Compensation conducted four hearings around the state. The report of the Citizen's Commission on Compensation for Elected Officials Report was thereafter filed with the Secretary of State on December 1, 2006. At the end of this report is the following summary concerning compensation for judges:

The salary for each position is increased by the \$1,200 and 4% pay increases granted to state employees in recent years.

Each Associate Circuit Judge shall receive a one-time increase of \$2,000 to reduce the differential between that position and the position of Circuit Judge. In addition to the salary specified in the above table, the salary for each judge shall be increased for the Fiscal Years beginning in July 2007 and July 2008, to the same extent the salary of the average state worker is increased.

In addition to these amounts, a leadership differential of \$2,500 annually shall be paid to the judge serving as Chief Justice.

To the extent judges are entitled to receive any mileage reimbursement, they shall receive the same rate determined by the Office of Administration to reimburse state employees.

Governor Blunt recommended and the Legislature approved 3% pay increases for state employees for both FY 2008 and FY 2009. Based upon the acts of the Commission on Compensation together with the state employee pay increases, the compensation for Associate Judges effective July 1, 2007 and July 1, 2008 is calculated and summarized as follows:

Associate Judge Salary established July 1, 2000	\$96,000
2007 Citizen's Commission Salary Increase	\$1200
Sub-Total	\$97,200
4% previous state employee raise	\$3,888
Sub-Total	\$101,088
Associate Judge differential reduction Increase	\$2,000
Sub-Total	\$103,088
3% FY 2008 state employee raise	\$3092
Compensation effective July 1, 2007	\$106,181
3% FY 2009 state employee raise	3,185
Compensation effective July 1, 2008	109,366

Exhibit 74

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
CIRCUIT DIVISION

FILED

DEC 09 2010

SUE BROWN,
CIRCUIT CLERK, PHELPS COUNTY, MO.

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

Relator,)

v.)

Case No.:

RANDY VERKAMP, BUD DEAN and)
LARRY STRATMAN, 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.)

EXHIBIT

SUMMARY OF UNDERPAYMENT OF SALARY

Period	Salary Under Commission Report	Salary Paid	Difference Due Relator
January 1 to July 1, 2007	96,000.00 per year	96,000 per year	0.00
July 1, 2007 to July 1, 2008	106,181.00	96,000.00	10,181.00
July 1, 2008 through July 1, 2009	109,366.00	96,000.00	13,366.00
July 1, 2009 through July 1, 2010	109,366.00	96,000.00	13,366.00
July 1, 2010 through December, 2010	109,366.00 / 12 = 9,133.83 per month	96,000.00 / 12 = 8,000.00 per month = 1,133.83 x 6 =	6,802.98
TOTAL			43,715.98

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
CIRCUIT DIVISION

FILED

DATE: 1-7-11

SUE BROWN
CIRCUIT CLERK
PHELPS COUNTY, MO.

State of Missouri, ex rel.,)
COURTNEY GEORGE,)
Relator,)

v.)

Case No.: 10PH-CV02079

RANDY VERKAMP, BUD DEAN, and)
LARRY STRATMAN, as duly elected)
and serving Commissioners of Phelps)
County, Missouri, County Commission,)
CAROL BENNETT, as duly elected and)
serving County Clerk of Phelps County,)
Missouri, and CAROL GREEN, as the)
duly elected and serving Treasurer of)
Phelps county, Missouri,)
Respondents.)

ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW Respondents, by and through counsel, and for their Answer to
Relator's Petition for Writ of Mandamus, state as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit that Respondents have continued paying Relator \$96,000.00 per year,
as to the rest Denied.
9. Legal Conclusion not requiring and Answer, but otherwise Denied.

- 10. Admit.
- 11. Denied.
- 12. Denied.
- 13. Admit.
- 14. Admit.

WHEREFORE, Respondents pray that the Preliminary Order in Mandamus be quashed, and for other further relief as deemed just and proper.

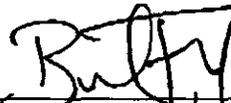
Respectfully submitted,



Brendon Fox, #59754
 Assistant Prosecuting Attorney
 Phelps County, Missouri
 200 N. Main, Suite G69
 Rolla, MO 65401
 T: 573/ 458-6170
 F: 573/ 458-7197
 E: brendon.fox@phelpscountypa.org
 Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies that the above document has been served via facsimile, to J. D. Baker, Attorney for Relator, 417/ 646-8125, this 7 day of January, 2011.



Brendon Fox, #59754

 [West Reporter Image \(PDF\)](#)

303 Mo. 302, 260 S.W. 466

Supreme Court of Missouri, En Banc.
STATE ex rel. MOSS
v.
HAMILTON et al., Judges.

(No. 24913.)
March 22, 1924.

Mandamus by the State, on the relation of Logan T. Moss, against George B. Hamilton and others, Judges of the County Court of Crawford County. Alternative writ made absolute.

West Headnotes

 [KeyCite Citing References for this Headnote](#)

- 79 Clerks of Courts
 - 79k10 Compensation and Fees of Clerks of State Courts
 - 79k33 k. Salaries. Most Cited Cases

Under Laws 1915, pp. 378, 380, §§ 1, 5, fixing the salaries of circuit clerks in lieu of the fees allowed them by Rev.St.1909, § 10722, as amended by Act March 27, 1911, p. 384, and Act March 29, 1913, p. 702, at \$1,600 in counties of between 15,000 and 20,000 population and \$1,950 in counties of between 20,000 and 25,000, determined by multiplying the number of votes cast in the county at the last presidential election by 5, one elected circuit clerk of a county within the first class in 1918 for four years became entitled to a higher salary for the last two years of his term, where the presidential vote in 1920, multiplied by 5, indicated a population of over 20,000, his salary being definitely fixed before his election, though a change of class might give him a different amount.

 [KeyCite Citing References for this Headnote](#)

- 156 Estoppel
 - 156III Equitable Estoppel
 - 156III(A) Nature and Essentials in General
 - 156k58 k. Prejudice to Person Setting Up Estoppel. Most Cited Cases

To work an equitable estoppel, the person claiming it must have been misled into such action that he will suffer injury if the estoppel is not declared.

 [KeyCite Citing References for this Headnote](#)

- 156 Estoppel
 - 156III Equitable Estoppel
 - 156III(A) Nature and Essentials in General
 - 156k62 Estoppel Against Public, Government, or Public Officers
 - 156k62.3 k. Counties and Subdivisions Thereof. Most Cited Cases
(Formerly 156k62(3))

A circuit clerk receiving salary at the rate fixed under Laws 1915, p. 378, by the population of the county as indicated by the last presidential vote, multiplied by 5, *held* not estopped from claiming an

additional amount due for the last two years of his term by reason of the increased population, indicated by a second presidential vote, even if his conduct was based on a pure mistake of law, instead of a mistake of both law and facts, as shown by his averment of ignorance as to the population and failure of the county court to determine it since such election; the transaction being between public officials as to public funds, restitution of which by an officer wrongfully receiving them from other public officials may be compelled, though paid to him under an honest mistake of law.

KeyCite Citing References for this Headnote

- ↳ 156 Estoppel
 - ↳ 156III Equitable Estoppel
 - ↳ 156III(A) Nature and Essentials in General
 - ↳ 156k62 Estoppel Against Public, Government, or Public Officers
 - ↳ 156k62.3 k. Counties and Subdivisions Thereof. Most Cited Cases
(Formerly 156k62(3))

That a circuit clerk paid over monthly fees collected by him as required by law, and put in monthly bills for salary at a lesser rate than fixed by law, would not estop him from claiming additional amounts to which he was entitled; his conduct and acts not having caused the county to act to its detriment, in view of its legal obligation to pay the statutory salary.

KeyCite Citing References for this Headnote

- ↳ 156 Estoppel
 - ↳ 156III Equitable Estoppel
 - ↳ 156III(D) Matters Precluded
 - ↳ 156k99 k. Extent of Estoppel in General. Most Cited Cases

An equitable estoppel cannot arise unless justice to the rights of others demands, its office being not to work a positive gain to a party, but to protect him from a loss which he could not otherwise escape, and hence should be limited to what is necessary to put the parties in the same relative position they would have occupied if the predicate of the estoppel had never existed.

KeyCite Citing References for this Headnote

- ↳ 283 Officers and Public Employees
 - ↳ 283III Rights, Powers, Duties, and Liabilities
 - ↳ 283k93 Compensation and Fees
 - ↳ 283k100 Increase or Reduction of Compensation
 - ↳ 283k100(1) k. In General. Most Cited Cases

Laws 1915, p. 380, fixing salaries of circuit clerks at stated sums according to the population of the various counties as shown by their total vote at the last presidential election, multiplied by 5, held not a violation of Const. art. 14, § 8, as permitting an increase or decrease in salary during the term; the salaries of such officers in each class of counties being fixed before their election and not changed by any law since enacted.

KeyCite Citing References for this Headnote

- ↳ 294 Payment
 - ↳ 294III Operation and Effect
 - ↳ 294k50 k. Discharge of Debt in General. Most Cited Cases

Part payment of a legal obligation does not discharge the debt.

****467 *304** L. B. Woodside, of Salem, for relator.

***305** Roy Clymer, of Steeiville, for respondents.

***306** GRAVES, J.

Original proceeding by mandamus. Relator was elected clerk of the circuit court of Crawford county, Mo., at the November election in 1918. He discharged the duties of the said office for the four years beginning January 1, 1919, and ending December 31, 1922. During the first two years his salary was \$1,600 per annum, based upon the presidential vote of 1916, multiplied by 5.

***307** The respondents are the judges of the county court of Crawford county. At the general election in 1920 the presidential vote was \$4,359, which if multiplied by 5, would make the population of the county 21,795, and under the law the relator's salary should have been (as he claims) fixed at \$1,950 for the remainder of his term; there being no intervening presidential election. Relator avers his ignorance of the population, and avers that the county court paid him the sum of \$1,600 per annum for such two years, although there was no settlement of the matter between him and the county court, and no intent to waive the question by him. He asks that we compel the court to issue to him a salary warrant for \$700, the difference between \$1,600 per annum, and \$1,950 per annum, for these last two years of his term.

This court exercised its discretion in favor of issuing the alternative writ, because the decision of the matter was one of public importance, and because there were many other circuit clerks similarly situated. We have the following as facts in the record:

'It is hereby agreed as facts in this case in regard to the payment of the petitioner, Logan T. Moss, that at the end of each month during the years 1921 and 1922, the said Logan T. Moss filed with the county court an account of the fees collected by him in his office which was approved by the court, and he paid the amount of said fees each month into the county treasury. At the same time he would file an account with the court substantially as follows: 'Crawford County, Missouri, to Logan T. Moss, Dr. Salary for month of _____, 1921, \$133.33.' And the court without any question would direct that a warrant issue to him for that amount. There was no controversy between them about it, and Mr. Moss did not by any statement waive any right he might have had for a greater sum as salary. He did not claim any more, and the court never offered him any more or less. He simply did as the other officers of the county did—filed the account for the salary as above stated.'

***308** Further on we find this much further:

'It is further agreed that the presidential election in Crawford county November, 1920, the vote cast was 4,360. November, 1916, the vote cast was 3,024.'

Respondents' return in the case is as follows:

'Now at this day come the respondents and for their return to the alternative writ issued in this cause admit that they are the duly elected, qualified, and acting judges of the county court of Crawford county, Mo., and that Logan T. Moss was duly elected clerk of the circuit court within and for Crawford county, Mo., at the general election held in said county in November, 1918, qualifying and taking office on the first Monday in January, 1918, for a term of four years ending December 31, 1923.

'For their further return to said alternative writ issued herein respondents would respectfully state: That during the entire term of office as such circuit clerk, ending December 31, 1922, the said Logan T. Moss, as such circuit clerk, filed in the office of said with the clerk of the county court of our said Crawford county, Mo., his monthly demand and bill for his monthly salary as such clerk, stating therein the amount due him as such monthly salary as such clerk for the month next preceding the date of the filing of such demand and bill. That said demands and claims for such monthly salary were filed monthly by relator herein during the entire term of four years ending December 31, 1922, and said monthly demands and claims were taken up by the county court of our said county and allowed in full, and warrants issued for the amount claimed to be due as such salary. That said monthly

demands and claims were based upon a salary of \$1,600 per annum. That at no time during the said term of four years ending December 31, 1922, was any demand or claim of the said relator herein for ****468** such monthly salary disallowed or payment allowed upon the same in a less amount than the amount claimed to be due by relator, but each and every month the full amount claimed to be due by said relator was allowed in full. That the amount claimed to be due him ***309** as salary as such clerk was paid to said relator upon his final settlement as such clerk. That at no time during the said term of four years ending December 31, 1922, was any claim or demand made by said relator for any salary due him as such clerk, other than the monthly claim and demand for salary amounting to \$1,600 per year, for which demands and claims were filed and which were allowed.

'And for further return to said alternative writ issued herein, respondents would respectfully state: That the census of 1910 gives to Crawford county, Mo., a population of 13,576. That at the general election held in Crawford county, Mo., in November, 1916, the same being a presidential election, there were cast a total of 3,024 votes. That, multiplying the total number of votes cast at such election by 5, as is provided shall be done in fixing the amount of salary circuit clerk should receive, this county would be placed in that class of counties having a population of more than 15,000 and less than 20,000, and the salary of the circuit clerk would be \$1,600 per annum. That in fixing and determining the amount of salary to which the clerk of the circuit court would be entitled to receive, the salary for the entire term of four year ending December 31, 1922, was fixed and determined by said court, and not for any particular portion of said term. That the county court has refused to allow and pay demand and claim for salary, in addition to the amount already paid, for the years 1921 and 1922, for the reason that under the Constitution and laws of this state the salary of the clerk of the circuit court for the term ending December 31, 1922, was fixed and determined by the total vote cast in said county at the presidential election in November, 1916, and that the salary for the entire term of four years ending December 31, 1922, was and should be fixed and determined by said vote at said election; and for the further reason that, as the full claim and demand of said relator for such salary as such clerk of the circuit court of our said county, as evidenced by his monthly demands ***310** and claims, filed by him with the clerk of the county court of our said county, were allowed and paid in full, said relator would now be estopped from asserting any further claim and demand for additional salary not heretofore claimed to be due.

'Having fully answered said alternative writ issued herein, respondents pray judgment of the court accordingly.'

Upon these pleadings and admitted facts, relator moved for judgment in this language:

'Now comes the petitioner in this cause and prays for judgment upon the return of the respondents herein for the following reasons:

'The return of the respondents does not set forth any legal reason why the salary of the relator as clerk of the circuit court of Crawford county, Mo., should not be paid as demanded in the petition. Under the facts set forth and admitted in the petition and return, the said relator is entitled to recover from the county of Crawford, the sum of \$700 yet due him on his salary as clerk of the circuit court of Crawford county, Mo., during the years of 1921 and 1922, \$350 for each of said years, and it is the legal duty of the respondents to cause to be issued to him county warrants for the payment of said sum.'

Such is the outline of the case.

[1] I. Learned counsel (when both briefs are considered) practically agree upon the legal question to be determined in this case. The return is of some length, but, when boiled down, it raised but two defenses to relator's action-(1) that relator's salary was fixed for the whole term by the presidential vote of 1916, and therefore relator had been paid in full, when he was paid \$1,600 for each of the four years; and (2) that, even if, after the presidential election of 1920, he was entitled to receive \$1,950 per year, he is estopped because he made out his monthly salary bills at the rate of \$1,600 per year, ***311** and the same were allowed by the court and received by relator.

Involved with these two questions may be some side issues, which can be considered in the proper

connection. The law fixing the salaries of circuit clerks is the act of 1915 (Laws of 1915, p. 378) and subsequent amendments thereto at a later date.

This law classified clerks of the circuit court according to the population of their respective counties, in the matter of fixing the salaries to be paid. Section 1 of the law concludes with this provision:

'For the purposes of this act the population of any county shall be determined by multiplying by five the total number of votes cast in such county at the last presidential election prior to the time of such determination.'

The portion of the law applicable to the contentions made in this case, so far as the amount of the salary is concerned reads:

'In counties having a population of 15,000 persons and less than 20,000 persons, the sum of sixteen hundred dollars; in counties having a population of 20,000 persons and less than 25,000 persons, the sum of nineteen hundred and fifty dollars.'

The presidential vote in Crawford county in 1916 was 3,024, which, when multiplied by 5, would give the population of the county as between 15,000 and 20,000 mentioned in the first of the last two clauses of the law quoted, supra.

The presidential vote of said county in 1920 was 4,360, which placed the population as between 20,000 and 25,000, mentioned in the last clause of the law quoted, supra. If the presidential vote of 1916 fixed the salary of relator for the full term, then, as said, he has been fully paid, and our alternative writ should be quashed, and the permanent writ refused. If he was to have an adjustment of his salary after the election in 1920, then other questions arise, and he may be entitled ****469** to his writ. Of the several questions in their order.

***312 II.** It should first be noted that there is in the return no technical plea of either res adjudicata, or accord and satisfaction. The pleas inperposed are payment in full and estoppel. Payment in full is based upon the theory that the salary for the full term of four years, is fixed by the presidential vote 1916.

In the act of 1915, supra, clerks of the circuit court and their deputies were placed upon a salary basis, rather than the old fee basis theretofore existing. See section 5 of act of 1915 (Laws of 1915, p. 380), whereat it is said:

'The salaries provided for in this act shall be in lieu of the aggregate amount of fees which clerks of circuit courts are permitted to retain for their services, and for the payment of deputies, under (and) by virtue of section 10722 of the Revised Statutes of 1909, as the same is amended by an act approved March 27th, 1911, and as the same is amended by an act approved March 29th, 1913, and so much of said section and said amendatory acts as are in conflict with or are inconsistent with this act are hereby repealed.'

The real difference between the old and the new law is that, in the new law, the clerk pays over all fees, and his own salary and the salaries of his peputies are paid out of the treasury, whilst under the old law be withheld and paid to himself and his deputies their respective salaries, and paid the surplus, if any, into the county treasury. Under each law there are provisions fixing the salaries, or providing for the fixing of the salaries. Under the old law which fixed the salary of the clerk as per the population of the county (section 10722, R. S. 1909), it is contended that it has been ruled that the salaries of such officers are annual salaries, as distinguished from either term salaries (Allen v. Cowan, 96 Mo. 193, 9 S. W. 587) or quarterly salaries (King v. Texas County, 146 Mo. 60, 47 S. W. 920). In other words, relator's learned counsel contends:

'The salary of the clerk is an annual salary, and is fixed at the first period in the year when he is required to ***313** pay his fees into the treasury and claim his compensation.'

The Allen Case simply rules that the circuit clerk collected and held the fees of his office (1) for the payment of his deputy hire and his own legal allowances for salary, and (2) the remainder for the county. To this end it was ruled that if the clerk had earned fees for a given year, and as such fees were afterward collected, then he could apply them upon the salaries of his deputies and himself, if the collected fees for such year had not met and discharged such salaries for that particular year, i. e., the year in which the fees were earned. The ruling segregates the earned fees for a given year and makes them a trust fund out of which the deputy hire and clerk's salary is to be paid, and the surplus, if any, went to the county treasurer. It is only in this manner, that the law speaks of the salary as an annual salary.

In *King v. Texas Co.*, 146 Mo. loc. cit. 69, 47 S. W. 920, the salary is also spoken of as 'an annual compensation.' But all this does not mean that the clerk's salary must be fixed and determined each year by the county court. On the other hand, the old law as well as the new contemplates the determination of the salary after each presidential election. The counties might pass from one class to another at each presidential election. By this we mean that the population (to be determined under the facts and the law) might increase or decrease, and thus the county be thrown into a different class, as to salaries. Section 1, Laws of 1915, p. 378. This section with its provisos makes a number of classes. Upon this point the real question in this case is whether or not relator, who took office when the presidential vote of 1916 was effective, is and was bound by such vote after the presidential election of 1920. The mere fact that this court has denominated the salary of the clerk of the circuit court an annual salary, or an annual compensation, is not vital to the real issue. This real issue we take next.

[2] III. Relator's term began on January 1, 1919, and ended on December 31, 1922. No law was passed between *314 those dates which increased his salary. The whole difficulty, if there be difficulty in the case, arises out of the fact that clerks of circuit courts are not elected at presidential elections, but at what we call the off-year elections, whilst the act of 1915 fixed the method of determining the salary by presidential election dates and data. Were our circuit clerks elected in presidential years, there would not be before us the peculiar and rather difficult question we have in the instant case. This act of 1915 was in effect when relator was elected. Under it, relator's salary was fixed for his whole term, but was not in named dollars and cents for the whole term. The effect of this act of 1915 was to say to relator, 'Your salary shall be determined upon the presidential vote of 1916, until there is another presidential election, at which time your county may be in a lower or a higher class, according to the population indicated by the presidential vote.' The salary, in amount, was fixed by law as to relator's office in any event. If his county was not subjected to a change of class, his salary was not changed. If his county (by a decreased population) dropped to a lower class, his salary was fixed, and was fixed before his election, although the change of class might give him a different amount. So too, if his county increased in population and thereby passed to a higher class, the existing law (that in force at the time of his election) fixed for him a salary. True it was higher, but it was definitely fixed at the date of **470 his election. If the act of 1915 had said that the circuit clerk of Crawford county, elected in 1916, shall receive \$1,600 per year for the first two years, and \$1,950 per year for the last two years of the term there would be no question. Section 8 of article 14 of the Constitution could not be invoked, because the salary would not be either increased or decreased during the term. To my mind the act of 1915 as it now stands is no nearer a violation of section 8 of article 14 of the Constitution, than the supposed law. The lawmakers knew the presidential election years, and with this knowledge classified the counties*315 as to salaries, and provided that such salaries should be determined by the last previous presidential vote. The salary of each class was fixed, and as said no subsequent law has changed the fixed salaries. The mere fact that a county passed from one class to the other does not deprive the holder of the office of the salary fixed by law, and fixed too, at a time long prior to relator's election. In our judgment section 8 of article 14 of the Constitution does not preclude a recovery by relator. This because his salary was fixed by law before his election, and no law since enacted has changed it, except as we may hereafter note. The cases cited have no application to this state of facts. The exact question has never been ruled before. There is some language in *King v. Texas County*, supra, which might be construed to be in support of this ruling, but the question was not squarely at issue in that case.

IV. The act of 1915 (section 10995, R. S. 1919) was amended by act of April 1, 1921 (Laws of 1921, p. 607), but, as learned counsel for respondents does not treat this amendment as affecting

the case, we shall not further note it. We mention it here, because we made reference to a subsequent amendment of the original act in a previous point. It was this amendment in 1921 to which we referred.

[3] V. Going now to the final defense interposed: Respondents urge that relator is estopped by his own conduct. This conduct is fully set out both in the pleadings and agreed facts, and we need not reiterate. As said, *res adjudicata* is not pleaded nor proven. Accord and satisfaction is neither pleaded nor proven. Respondents, in the brief, also denominated relator's act of receiving salary at the rate of \$1,600 per year, as a mistake of law, and urge that money lost by reason of his mistake of law cannot be recovered.

To the latter proposition it should be said that the transaction, under the pleadings and facts, bespeak a mistake of both law and facts. He avers that he was ignorant *316 as to the population of his county, and that respondents had never entertained and determined it since the election of 1920. But for the purposes of this case it may be granted that his conduct was based upon a pure mistake of law, and yet he would not be precluded in this action. The transaction was one between public officials as to public funds. The law required relator to pay all fees collected into the county treasury each month, and it also directed the respondents to pay him his salary in monthly installments. A mistake of law will not excuse a public official from paying out public funds, when he is dealing with other public officials. The law, in such cases, will compel the restitution of the public funds by the officer who wrongfully receives it, although paid to him under an honest mistake as to the law. This doctrine is firmly fixed in Missouri. Lamar Township v. Lamar City, 261 Mo. 171, 169 S. W. 12, Ann. Cas. 1916D, 740; State ex rel. v. Scott, 270 Mo. 153, 192 S. W. 90.

[4][5][6] In the foregoing cases the action was brought to recover public funds, and in them question of the funds being paid over through an honest mistake of law is fully discussed. In the Lamar Township Case the money was ordered returned by the city of Lamar, to which it had been paid through a pure mistake of law. In the Scott Case this doctrine was approved. If the law will compel the restitution of public funds paid over under a pure mistake of law, the converse should also be true, i. e., that if such funds have been retained through a mistake of law, the right to their payment should not be denied. The foregoing determines this case without a more detailed discussion of the matter of estoppel, because it is largely upon these facts that the alleged estoppel rests. However, the facts pleaded and agreed upon, do not show estoppel, as such doctrine is defined by the law. The law fixed relator's salary, and the same law made it obligatory upon respondents to pay such salary in equal monthly portions. This was the legal status of the respective parties at the beginning of the third year of service, as it had been all along. The only acts of respondent pleaded and shown by way of estoppel are (1) that he paid over *317 monthly the fees collected by him, and (2) that he then put in monthly bills for it salary at the rate of \$1,600 per year. The law compelled relator to pay over the fees collected each month. This act could not work an estoppel, so that the other matter is the sole thing invoked, which would justify the plea. It does not suffice for that purpose. In 10 R. C. L. § 25, p. 697, a fair statement of the applicable rule of estoppel by acts in pais is thus stated:

'The final element of an equitable estoppel is that the person claiming it must have been misled into such action that he will suffer injury if the estoppel is not declared; that is, the person setting up the estoppel must have been induced to alter his position, in such a way that he will be injured if the other person is not held to the representation or attitude on which the estoppel is predicated. Furthermore, an equitable estoppel cannot arise except when justice to the rights of others demands. It was never intended to work a positive**471 gain to a party. Its whole office is to protect him from a loss which, but for the estoppel, he could not escape. Consequently the estoppel should be limited to what may be necessary to put the parties in the same relative position which they would have occupied if the predicate of the estoppel had never existed.'

Our court has consistently recognized this rule. Driskell v. Mateer, 31 Mo. 325, 80 Am. Dec. 105; Garesche v. Levering Inv. Co., 146 Mo. loc. cit. 451, 48 S. W. 653, 46 L. R. A. 232; Thompson v. Lindsay, 242 Mo. loc. cit. 76, 145 S. W. 472; Kiine v. Groeschner, 280 Mo. loc. cit. 614, 219 S. W. 648.

[7] If there was the legal obligation upon Crawford county to pay relator at the rate of \$1,950 per

year, as we have ruled, then there is nothing in the conduct and acts of relator which occasioned said county through respondents to act to their detriment, or to change its position to its detriment. At most the county only partially discharged a legal obligation. The partial payment of a legal obligation is not payment in full, and does not discharge the debt. Zinke v. Maccabees, 275 Mo. loc. cit. 666, 205 S. W. 1.

Upon the facts no act of relator caused Crawford county, or respondents, its agents, to do anything to the *318 detriment of the county or to themselves, as its agents. There was simply a part payment of a debt which the county owed under the law.

Our alternative writ should be made absolute, and it is so ordered.

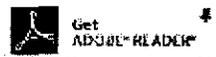
All concur, except WHITE, J., not sitting.

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Missouri Attorney General

Attorney General's Opinion No. 123-2001

Topics Compensation.
Counties.
Prosecuting attorney.

Summary conclusion

Upon Taney County becoming a first class county on January 1, 2001, the individual serving in the office of Prosecuting Attorney has the option of becoming a "full-time" prosecutor at the salary set forth in Section 56.265.1(1) RSMo 1999 Supp., or remaining part time at the salary set forth in Section 56.265.1(2) RSMo 1999 Supp. Any increase in salary would not violate Article VII, Section 13 of the Missouri Constitution.

Contents of opinion

February 2, 2001

Rodney E. Daniels
Prosecuting Attorney
Office of the Prosecuting Attorney
Taney County, Missouri
P.O. Box 849
Forsyth, MO 65653

Dear Mr. Daniels:

You have submitted the following question to this office:

Does the Office of Prosecuting Attorney of Taney County become a full-time position when Taney County becomes a county of the first classification on January 1, 2001, and if so, what is the compensation or salary to be paid to the Prosecuting Attorney beginning January 1, 2001?

You state in your request that:

Taney County, Missouri is currently a third class county; however, it will become a first class county on January 1, 2001. Third class counties have a part-time Prosecuting Attorney, who is paid a salary according to the applicable laws for a third class county. This currently is the situation in Taney County. However, Section 56.067 indicates that in a first class county, the Prosecuting Attorney "shall devote full time to his office", and that the salary and compensation for a full-time Prosecuting Attorney is controlled by Section 56.265 RSMo. Missouri Prosecuting Attorneys, including that of Taney County, were elected to a four year term of office beginning on or about January 1, 1999, and scheduled to end on or about December 31, 2002.

The concern expressed in your request is whether it is appropriate to adjust the salary of a prosecuting attorney in the middle of a term when the classification of the county changes. Similar concerns would apply to all county offices in which the incumbents are within their respective terms.

Article VII, Section 13 of the Missouri Constitution provides:

Attorney General's Opinion No. 123-2001

The compensation of state, county and municipal offices shall not be increased during the term of office.

This office has interpreted this provision to not be implicated when a county changes classification from a fourth class county to a third class county. Officials in the middle of their terms of office when the county changes classification are entitled to their salaries in the higher classification because that salary was fixed by law at the time of the officials' election to their present terms. See Opinion 1-29-53, No. 92, Vogel.

The legislature has recognized that a county may change classification in the middle of a term of office of a prosecuting attorney. Section 56.265 RSMo 1999 Supp. provides, in part:

The prosecuting attorney of any county which becomes a county of the first classification during a four-year term of office . . . shall not be required to devote full time to such office pursuant to section 56.067 until the beginning of the prosecuting attorney's next term of office or until the proposition otherwise becomes effective.

This provision giving a prosecuting attorney in a county that becomes a first class county during the term of office the option of not becoming a "full-time" prosecutor is the recognition that that individual may have fiduciary responsibilities to clients that preclude that individual from immediately abandoning those clients. While it is true that Section 56.067 RSMo 1999 Supp. provides that first class county prosecutors "shall devote full time to his office," the previously cited provisions in Section 56.265 RSMo 1999 Supp. make an exception to that requirement. If a prosecutor chooses to be part time, the salary is set forth at Section 56.265.1(2) RSMo 1999 Supp.

The statutory framework whereby a prosecuting attorney in a first class county would be entitled to a salary greater than that of a prosecuting attorney in a third class county was in place when the Taney County officials were elected in 1998. By operation of law Taney County will become a first class county on January 1, 2001. Because the framework was in place and the county classification will change, the constitutional prohibition against increasing compensation during a term of office does not apply.

If the prosecuting attorney of Taney County chooses to be a full-time prosecutor upon Taney County becoming a first class county, the salary for that position is set forth in Section 56.265.1(1) RSMo 1999 Supp. If the prosecutor chooses to be part time, the salary is set forth in Section 56.265.1(2) RSMo 1999 Supp.

CONCLUSION

Upon Taney County becoming a first class county on January 1, 2001, the individual in the office of Prosecuting Attorney has the option of becoming a full-time prosecutor or continuing part time at the salary set forth in Section 56.265.1(2) RSMo 1999 Supp. Any increase in salary would not violate Article IV, Section 10 of the Missouri Constitution.

Very truly yours,



ERIC S. LITZ, ATTORNEY GENERAL