

IN THE  
SUPREME COURT OF MISSOURI

MISSOURI PROSECUTING	)	
ATTORNEYS AND CIRCUIT	)	
ATTORNEYS RETIRMENT	)	
SYSTEM, an agency of the	)	
State of Missouri,	)	
Appellant,	)	
	)	
v.	)	SC89896
	)	
BARTON COUNTY, Gerry	)	
Miller, John Stockdale, and	)	
Dennis Wilson,	)	
Respondents.	)	

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BRIEF OF ATTORNEY GENERAL AS AMICUS CURIAE

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## INTRODUCTION

The Court has asked the Attorney General “how the Court should construe the term ‘compensation of county officers’ as contained in Mo. Const. art VI, sec. 11.” As discussed below, “compensation” should be given a broad reading – broad enough to cover deferred compensation in the form of retirement benefits.

## BACKGROUND

Prior to 1986, Art. VI § 11, which descended from the 1875 constitution,<sup>1</sup> read:

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<sup>1</sup> Art. IX § 13 in the 1875 constitution read:

SEC. 13. The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury.

Except in counties which frame, adopt and amend a charter for their own government, the compensation of all county officials shall be prescribed by law uniform in operation in each class of counties. Every such officer shall file a sworn statement in detail, of fees collected and salaries paid to his necessary deputies or assistants, as provided by law.

That provision became problematic in the early 1980's, principally because of the 1980 passage of the Hancock Amendment. One portion of the Hancock Amendment, Art. X § 21, barred the State from imposing on local governments new or increased responsibilities without also providing funding:

Section 21. The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to

pay the county or other political subdivision for any increased costs.

The interaction between Art. VI § 11 and Art. X § 21 reached this Court in *Boone County Court v. State*, 631 S.W.2d 321 (Mo. banc 1982). The General Assembly had passed “a salary increase for second class county collectors.” *Id.* at 322. This Court considered “whether the State of Missouri or Boone County must bear the added expense of this one hundred dollar increase in the collector’s annual salary.” *Id.* at 322. The Court cited Art. VI § 11 and held, “The power of the General Assembly to increase the salary of certain county officials has been modified by the Hancock Amendment to the extent that any such increases now must be paid from the state treasury.” *Id.* at 326.

The issues created by Art. VI § 11 were not limited to those involving the Hancock Amendment. The requirement that compensation laws be “uniform in operation in each class of counties” became troublesome as the legislature tried to deal with the considerable variations among counties of the same “class.” *See Baumli v. Howard County*, 660 S.W.2d 702 (Mo. banc 1983).

Apparently in response to *Boone County* and *Baumli*, the legislature proposed and in August 1986 the people enacted a new version of Art. VI § 11, which still reads:

Section 11. 1. Except in counties which frame, adopt and amend a charter for their own government, the compensation of all county officers shall either be prescribed by law or be established by each county pursuant to law adopted by the general assembly. A law which would authorize an increase in the compensation of county officers shall not be construed as requiring a new activity or service or an increase in the level of any activity or service within the meaning of this constitution. Every such officer shall file a sworn statement in detail, of fees collected and salaries paid to his necessary deputies or assistants, as provided by law.

2. Upon approval of this amendment by the voters of Missouri the compensation of county officials, or their duly appointed successor, elected at the general election in 1984 or 1986 may be increased during that term in accordance with any law adopted by the general assembly or, in counties which have adopted a charter for their own government, in accordance with such charter, notwithstanding the provisions of

section 13 of article VII of the Constitution of  
Missouri.

That provision became pertinent in this case when Barton County invoked the Hancock Amendment to avoid a statutory obligation to pay, indirectly, its prosecutor through contributions to the Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System, and the System invoked the 1986 language as a defense against the Hancock claim.

### ARGUMENT

The fact that the provision at issue is a constitutional rather than a statutory one distinguishes the appropriate analysis here from the analysis used in statutory construction in two respects.

First, it dictates the point from which the language is to be viewed. While statutes are interpreted according to the intent of the legislature, “[a] constitutional provision is ‘interpreted according to the intent of the voters who adopted it.’” *Conservation Federation of Mo. v. Hanson*, 994 S.W.2d 27, 30 (Mo. banc 1999), quoting *Savannah R-III School Dist. v. Public School Retirement System of Missouri*, 950 S.W.2d 854, 859 (Mo. banc 1997). Thus the Court should consider the language of Art. VI § 11 as it appeared to those entering the voting booth in August 1986 – *i.e.*, it should ask what the people of Missouri intended when they amended Art. VI § 11 in 1986. We can

substitute “the people” for “the legislature” when setting out how to answer the question posted by the Court:

The primary rule of [constitutional] construction requires this Court to ascertain the intent of the [people] by considering the plain and ordinary meaning of the words used in the statute. . . .

*Jones v. Director of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992) (citations omitted). This Court itself used “the people” when speaking of constitutional language in *Boone County*: “the court must ascribe to the words the meaning which the people understood them to have when the provision was adopted.” 631 S.W.2d at 324.

Second, constitutional provisions demand the use of interpretative tools in a fashion that leads to broad construction: “Rules applicable to constitutional construction are the same as those applied to statutory construction, except that the former are given a broader construction, due to their more permanent character.” *Id.* So the Court must read “compensation” broadly so as to serve the objectives of the 1986 voters.

**I. The plain language of Art. VI § 11 includes all forms of compensation.**

We begin with the “plain and ordinary meaning” of the language used in the 1986 amendment. As noted above, the amendment grants the General

Assembly authority to enact statutes addressing “compensation of all county officials.” The parties here disagree about the meaning of the word, “compensation.”

The starting place for resolving that issue is the dictionary: “When construing a constitutional provision, ... words are to be taken in accord with their fair intendment and their natural and ordinary meaning, which can be determined by consulting dictionary definitions.” *Saint Louis University v. Masonic Temple Ass’n of St. Louis*, 220 S.W.3d 721, 726 (Mo. banc 2007).<sup>2</sup>

Webster’s defines “compensation” as “payment for value received or services rendered: Remuneration....” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993), p. 463. Although it would be inappropriate to ascribe legal knowledge to voters by relying on a legal dictionary, the result would be the same: Black’s Law Dictionary defines “compensation” as “Remuneration and other benefits received in return for services rendered; esp., salary or wages.” BLACK’S LAW DICTIONARY (7<sup>th</sup> Ed., 1999) p. 277. Black’s also defines “deferred compensation”: “Payment for work performed, to be paid in the future or when some future event occurs.” *Id.*

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<sup>2</sup> Neither party to the appeal addressed any dictionary definition of “compensation,” though Barton County did address dictionary definitions of other terms. *See* Respondent’s Brief at 25.

Those definitions lead to the conclusion that the people of Missouri, when enacting Art. VI § 11 in 1986, intended to include in the scope of the General Assembly's authority all forms of "remuneration," regardless of whether they were immediately paid.

Of course, "compensation" cannot be read in isolation from the rest of the proposition placed before the voters. But consideration of the constitutional provisions referenced in Art. VI § 11 buttresses the conclusion that "compensation" refers to all forms of remuneration.

Paragraph 2 of Art. VI § 11 explicitly references Art. VII § 13, which has since 1820 (*see* 1875 Mo. Const., Art. XIV § 8; 1820 Mo. Const. Art. III § 24) barred officials from increasing their own "compensation" during their term of office:

Section 13. 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.

To make sense, that provision must bar not just compensation that is payable immediately (*i.e.*, salary or wages), but also compensation that is paid later (*e.g.*, retirement benefits). To read "compensation" in Art. VII § 13 narrowly so as to exclude retirement benefits would mean that although officials could not vote themselves immediately effective pay

raises, they could immediately increase their retirement benefits. That would be antithetical to the purpose of Art. VII § 13. And because of the cross-reference, voters in 1986 presumably intended to use “compensation” consistent with its use in Art. VII § 13.

In addition to the explicit cross-reference to Art. VII § 13, Art. VI § 11 contains an implicit cross reference to the Hancock Amendment. As discussed in *Boone County* and noted above, the Hancock Amendment bars the state from imposing on local governments the obligation of paying for a “*new activity or service or an increase in the level of any activity or service* beyond that required by” the law existing in 1980. Art. X § 21. The 1986 change to Art. VI § 11 used those same words: “A law which would authorize an increase in the compensation of county officers shall not be construed as requiring a *new activity or service or an increase in the level of any activity or service* within the meaning of this constitution.” Again, voters were importing a concept from another part of the Constitution – here an exception to an otherwise general rule, one that by using the Hancock language was defining itself as coextensive, with regard to pay for county officials, with the Hancock provision.

The word “compensation” in Art. VI § 11 is in no way ambiguous. As it would logically and reasonably be read by the voters in 1986, it gave

authority to the General Assembly to either set the compensation for county officials or establish the method for counties to set that compensation themselves – regardless of Art. X § 21 and (temporarily) Art. VII § 13. And that authority included all forms of remuneration, including retirement pay, which is merely a form of deferred compensation. *See Kuchta v. Kuchta*, 646 S.W.2d 663, 665 (Mo. banc 1982).

**II. Canons of construction confirm that Art. VI § 11 includes all forms of compensation.**

“Where the language of the statute is unambiguous, there is no room for construction.” *Jones v. Director of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992) (citations omitted). That is the case here, with regard to the word “compensation” in Art. VI § 11. If that provision were ambiguous, the court could turn to the canons of statutory construction to ascertain the voters’ intent. That would lead, however, to the same result: a broad reading of the term, “compensation.”

**A. History of the amendment.**

Canons that refer to the history of statutory or constitutional language would, if applied here, lead the Court to consider the history of the 1986 amendment. As noted above, it is apparent that the portion of the amendment at issue here was proposed specifically to avoid the problems that arose because of judicial decisions. The Court of Appeals has correctly

noted that “on August 5, 1986, the citizens of Missouri adopted a constitutional amendment effectively reversing the Court’s decision in *Boone County*.” *Associated Gen’l Contractors v. Missouri Dept. of Lab. & Indus. Rel.*, 898 S.W.2d 587, 594 n.6 (Mo. App. W.D. 1995). The timing and content of the amendment suggests that it was also designed to reverse *Baumli*. The conclusion that the amendment was designed to permanently return to the legislature broad authority to decide whether and how to set county officials’ compensation is consistent with a contemporary editorial, which in endorsing the proposed amendment explained:

Elected officials in Missouri’s non-charter counties are in a no-win situation when it comes to their salaries. The state constitution says their pay must be set by the General Assembly. That has resulted in very uneven salary levels over the years.

But court decisions also have held that the state must pay for any increases the legislature approves. The result has been dismal salaries in many counties because of legislative reluctance to

spend the money.

Kansas City Times, Aug. 4, 1986, p. A-8.<sup>3</sup>

When the legislature “reverses” judicial decisions, the new law is given a broad interpretation to accomplish that objection. *See Watson v. Philip Morris Companies, Inc.*, 420 F.3d 852, 856 (8<sup>th</sup> Cir. 2005). The same should be true of constitutional amendments enacted by popular vote.

Of course, the voters may or may not have considered *Boone County* or *Baumli*. All we really know that they saw was the ballot they marked, which described the amendment as follows:

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<sup>3</sup> We recognize that in *Laclede County v. Douglass*, 43 S.W.3d 826, 828 (Mo. banc 2001), this Court asserted, after quoting part of the first and all of the second subsections of Art. VI § 11: “When the subsections are read together, as intended, their application is limited to county officers elected in 1984 or 1986, and to any increase in compensation provided by law to those officers during their terms.” But asserted so broadly, that statement is wrong. There is nothing in subsection 1 that even hints at its being limited to the officials and terms addressed in subsection 2. Rather, it is worded as a general rule, effective until modified. Subsection 2, on the other hand, is a transition, necessary to give subsection 1 immediate effect, in light of Art. VII § 13.

County officials['] compensation shall not exceed limits provided by law or as established by the proper authority. The fiscal effects of this proposal depend upon actions taken by the general assembly or by county governments subsequent to the adoption of this amendment.

Official Manual, 1987-88, p. 1167. That language places no limits on the forms of “compensation” subject to the new provision. It leaves it to the voters to apply their own views of what “compensation” includes – views that presumably match the broad, common, dictionary definitions.

**B. Use of “compensation” elsewhere.**

Other canons look to the use of terms elsewhere, attempting to find common meaning. Of course, here the voters did not have before them any provision other than Art. VI § 11, and were not referred, in the Amendment nor in the ballot title, to any provision using that term, other than Art. VII § 13, addressed above. There is no reason to suppose that the voters in 1986 searched the constitution for and considered other provisions that use “compensation” and other forms of “compensate.”

Thus it seems unlikely that the voters considered the relationship between Art. VI § 11 (in either its old or new versions) and Art. VI sections 12 and 13. The latter sections were part of the effort in the 1945 constitution

(and earlier) to address problems arising from having public officials paid from fees. Sections 12 and 13 restrict the ability of certain officials to accept compensation in the form of fees:

Section 12. All public officers in the city of St. Louis and all state and county officers in counties having 100,000 or more inhabitants, excepting public administrators and notaries public, shall be compensated for their services by salaries only.

Section 13. All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law.

Those two provisions limit compensation to “salary.” If the Court were to reach the question of what “salary” means in sections 12 and 13, it should read the term consistent with the purpose of the provisions, *i.e.*, with the objective of no longer having many public officials paid from fees, and not to give “salary” a narrow definition that would exclude deferred compensation such as retirement benefits.

The payments at issue here are more salary than fees. They are made regularly, so long as the prosecutor is functioning in office. That they are made to the retirement system, and only later passed on to the retired prosecutor, does not present the evils associated with fee-based compensation, and should not be a basis for excluding officials covered by sections 12 and 13 from receiving retirement benefits corresponding to their paychecks. But this case does not present a situation in which the Court must consider the meaning of “salary” in sections 12 and 13.

If the Court were to look beyond Art. VI § 11 and the sections referenced therein, it would more appropriately consider Art. III § 39(3). Just as Art. VII § 13 bars mid-term pay increases, Art. III 39(3) bars post-term pay increases:

Section 39. The general assembly shall not have  
power: ...

(3) To grant or to authorize any county or municipal

authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part ....

This Court has recently applied that provision, which dates back to the 1875 constitution (Art. IV § 48), to retirement benefits. *Sihnhold v. Missouri State Employees' Retirement System*, 248 S.W.3d 596 (Mo. banc 2008). By doing so, the Court read the word “compensation” to accomplish a goal parallel to that of Art. VII § 13: to protect taxpayers and voters against abuse of office by preventing elected public officials from benefitting personally, without an intervening election, from their own votes or decisions. That reading is consistent with the lay definition of “compensation” as including all forms of remuneration, including deferred compensation in the form of retirement benefits.

Voters in 1986 could not, of course, have considered the meaning of “compensation” in the 1994 amendment (since revised) establishing the Citizens Commission on Compensation for Elected Officials, Art. XIII § 3. “Needless to say, the intent of the [1986] voters cannot be ascertained by the actions of the [1994] voters.” *Independence-Nat. Educ. Ass'n v. Independence School Dist.*, 223 S.W.3d 131, 137 n. 4 (Mo. banc 2007).

And if there is someday a case in which the intent of the 1994 voters is at issue, the 1986 amendment will be of little relevance. When the voters enacted Art. XIII § 3, they did not merely refer to “compensation”; they gave the term some definition:

Section 3. 1. Other provisions of this constitution to the contrary notwithstanding, in order to ensure that the power to control the rate of compensation of elected officials of this state is retained and exercised by the tax paying citizens of the state, after the effective date of this section no elected state official, member of the general assembly, or judge, except municipal judges, shall receive compensation for the performance of their duties other than in the amount established for each office by the Missouri citizens’ commission on compensation for elected officials established pursuant to the provisions of this section.

*The term “compensation” includes the salary rate established by law, mil[e]age allowances, per diem expense allowances.*

(Emphasis added.) “When a statute defines a term, that definition is given effect.” *American Nat. Life Ins. Co. of Texas v. Director of Revenue*, 269

S.W.3d 19, 21 (Mo. banc 2008). Were the Court faced with the need to define “compensation” for purposes of the limitation and payment imposed and the assignment of authority to the Citizens Commission made in Art XIII § 3, it would presumably conclude that “compensation” as used there consists of salary, mileage, and per diem. But there is no basis for concluding that the people in 1986 intended such a limited meaning in Art. VI § 11.

### CONCLUSION

For the reasons stated above, the Court should define “compensation” in Art. VI § 11 broadly to include all forms of remuneration, including deferred compensation such as retirement benefits.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE AND  
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The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, via United States mail, on this 16<sup>th</sup> day of November, 2009, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b), and that the brief contains 3,579 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copy of the brief has been scanned for viruses and is virus-free.

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