

**Summary of SC92219, *State of Missouri ex rel. Courtney M. George v. Randy Verkamp, Bud Dean and Larry Stratman, Carol Bennett, and Carol Green***

Appeal from the Phelps County circuit court, Judge Robert D. Schollmeyer

Argued and submitted March 7, 2012; opinion issued May 15, 2012

**Attorneys:** George was represented by Joseph D. Baker of the Baker Law Firm LLC in Osceola, (417) 646-8125, and the county officials were represented by Brendon Fox, a Phelps County assistant prosecutor in Rolla, (573) 458-6170.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A full-time prosecuting attorney appeals a circuit court's judgment that she is not entitled to a midterm salary increase given to associate circuit judges, to which the salaries of full-time prosecutors are tied. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for the circuit court to calculate the underpayment to the prosecutor. Because the statutory mechanism regarding the prosecutors' salaries was in place before the prosecutor here was elected, her salary was "fixed" throughout her term, and it does not matter that the "dollars and cents" were not.

**Facts:** Section 56.265.1(1), RSMo, mandates that a full-time prosecutor's salary be equal to that of an associate circuit judge. The compensation of an associate circuit judge is established by the Missouri Citizens' Commission on Compensation for Elected Officials pursuant to article XIII, section 3 of the Missouri Constitution. Courtney George was elected in November 2006 as the full-time Phelps County prosecutor for a term running from January 1, 2007, through December 31, 2010. In December 2006, the commission issued its report establishing, in its schedule of compensation, that the salary for an associate circuit judge would increase to \$106,181 per year beginning July 1, 2007, and \$109,366 per year beginning July 1, 2008. Because the legislature did not disapprove the commission's schedule of compensation, the increases in compensation for associate circuit judges took effect as scheduled pursuant to article XIII, section 3. George did not receive any salary increases during her term in office despite those given to associate circuit judges. In November 2010, she sued the Phelps County commissioners, county clerk and county treasurer for a court order requiring them to approve the increased compensation rates and to pay her the amount for which she was undercompensated. The circuit court ultimately denied relief to George. She appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** George was entitled to the increases in her compensation because the increases resulted from the application of a mechanism for calculating compensation that was in place before she was elected to or took office. Article VII, section 13 of the Missouri Constitution provides that the compensation of state, county and municipal officers shall not be increased during the term of office. Despite its language, this prohibition against midterm compensation increases is not absolute. One must assume the legislature is fully cognizant of this constitutional limitation when enacting legislation. One limited exception to article VII, section

13 is discussed in *State ex rel. Moss v. Hamilton*, 260 S.W. 466 (Mo. banc 1924). There, the Court approved the midterm increase in the salary of a county circuit court clerk elected in November 1918 based on a 1915 statutory formula. The Court held that, because the formula was in effect when the clerk was elected, the clerk's salary "was fixed for his whole term," even though it "was not in named dollars and cents for the whole term," and, therefore, did not violate the prohibition against midterm compensation increases. Here, as in *Moss*, there was a statutory mechanism in place before George was elected that establishes the salary of prosecuting attorneys by tying it to the compensation of associate circuit judges. The fact that the formula did not specify the "dollars and cents" of George's compensation did not preclude her from receiving the increase per this Court's holding in *Moss*.