

DEPUTY SHERIFFS:
DEPUTY CIRCUIT CLERKS:
COUNTY BUDGET LAW:

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(1) A circuit judge has the power, at any time, to make an order increasing the salary of a deputy sheriff and/or a deputy circuit clerk; (2) A county court is obligated to pay salary increases of deputy sheriffs and/or deputy circuit clerks ordered by a circuit judge; (3) A county court is obligated to issue warrants covering such salary increases even though there is not money immediately available for such purpose; (4) Warrants issued to deputy sheriffs and/or deputy circuit clerks will be protested if there are no funds available with which to pay them; (5) A county court would not be justified in refusing to pay a salary increase ordered by a circuit judge; (6) A circuit judge may not make an order for a salary increase of a deputy circuit clerk which is retroactive.

November 15, 1951

Honorable Edgar Mayfield
Prosecuting Attorney
Laclede County
Lebanon, Missouri

11-16-51

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"On behalf of the Laclede County Court, I would like to request an opinion from your office on the following proposition:

"At the beginning of 1951, our sheriff and circuit clerk each had one full time deputy, and when the county budget was made up for the year, the salary of the deputy sheriff was \$150.00 per month and the salary of the deputy clerk was \$110.00 per month. These respective salaries had been previously fixed by order of the Circuit Court.

"On September 29, 1951, the Circuit Court made two orders which were duly filed in the office of the county clerk. One order raised the salary of the deputy sheriff from \$150.00 per month to \$185.00 per month, to be effective as of October 1, 1951. The other order

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raised the salary of the deputy circuit clerk from \$110.00 per month to \$125.00 per month, to be effective as of September 1. Under this state of facts, the deputy sheriff would not be subject to drawing the increase in salary until the last of October, but the deputy clerk would be entitled to her increase as of the last of September. The Court, in making these orders, was acting under the authority of Sections 57.230, 57.250 and 483.345, 483.350, Revised Statutes of Missouri, 1949.

"When the last of September arrived, the county court refused to approve a voucher for the deputy clerk in the amount of \$125.00, and refused to pay her the increase in salary, but offered to pay her her original salary of \$110.00. Further, the county court indicates that it does not think that the court is legally required to pay either of said salary increases. The court feels that since these increases were not included in the budget estimates filed at the beginning of 1951 in accordance with the provisions of the County Budget Law, Section 50.670 to Section 50.740, Revised Statutes of Missouri, 1949. One question that we have, then, is how is the authority which is given the Circuit Court in Sections 57.230, 57.250, 483.345, and 483.350, with reference to the salaries and compensation of deputy sheriffs and circuit clerks, reconciled with the provisions of the County Budget Law, supra?

"If the authority of the Circuit Court is paramount and the county court is required to pay these increases as ordered, will it still have to pay the increase for the deputy clerk for the month of September, 1951, in view of the fact that the order was not made until September 29, 1951?

"Furthermore, the county court wanted to know whether it would have to pay these salary increases if it didn't have enough money to do so.

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I take this to mean, that the county court feels that on the basis of past experience with expenditures, the present rate of expenditure will use up all available funds by the end of the year. In this respect I wish to point out that the county is solvent and there is a balance on hand in the general current fund at the present time. Does the court have to go ahead and pay these increases in salaries as long as there is money in the county treasury with which to pay them? If all funds are used up before the end of the year, will not all warrants then outstanding be pro-rated or else protested, including the warrants given to the deputy sheriff and deputy clerk? Upon what basis, if any, would the county court be justified in refusing to pay these salary increases as ordered by the Circuit Court?"

We will here take note of the fact that Laclede County is a county of the third class.

We will consider first the case of the deputy sheriff. In this connection we desire to direct your attention to Section 57.250, RSMo 1949, which states:

"The sheriff in counties of the third and fourth classes shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered of record and a certified copy thereof shall be filed

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in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

In an opinion rendered by this department on January 14, 1948, to Honorable Leo Harned, Prosecuting Attorney of Pettis County, Missouri, (a copy of which opinion is enclosed) this department construed what is now Section 57.250, supra, to mean that in counties of the third class the circuit judge had the authority to change the compensation of deputy sheriffs at any time. This, it would appear, is the clear meaning of Section 57.250, quoted above.

We have carefully studied sections 50.670 through 50.740, inclusive, RSMo 1949, to which sections you have directed our attention. We do not find any conflict between the above sections and Section 57.250, quoted above. We note that Sections 50.670 through 50.740, inclusive, require the county court of each county, at the regular February term of such court, to prepare and file a budget of estimated receipts and expenditures, and that every county officer is required, not later than January 15, to furnish to the county clerk an itemized statement of the estimated amount required for the payment of all salaries for the current year. It is obvious, of course, that an increase in the salary of a deputy sheriff ordered by a circuit judge in September could not actually have been budgeted the previous February. We do believe, however, that such an increase is automatically included in the budget which was prepared in February. We have so held in an opinion issued on July 18, 1949, to Honorable Joe C. Welborn, Prosecuting Attorney of Stoddard County, a copy of which opinion is enclosed. This opinion holds: "An increase in salaries of prosecuting attorneys, effective July 7, 1949, is automatically included in the budget for the year 1949."

You will note after reading the above opinion issued by this office, that it is based entirely upon the case of Gill vs. Buchanan County, 142 S.W. (2d) 665. As we pointed out in the opinion to Welborn, the fact situation in the Gill case was not entirely similar to that in the Welborn case inasmuch as in the Gill case, the compensation of the county officer involved was fixed at the time the county budget was made but was not entirely included in the budget, whereas in the Welborn case the increase in the salary of the county officer involved was contained in a legislative act which did not become effective until July 7, subsequent to the fixing of the county

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budget the previous February. Nor is the instant case exactly similar to either the Gill case or the Welborn case. Here the increase is ordered by the circuit judge in September subsequent to the fixing of the county budget the previous February. In this connection, we would here direct your attention to the following portion of the opinion in the Gill case (l.c. 668):

"Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries to pay salaries of \$4,500 each. (Only \$840 more than the total of salaries figured at \$3,000 each was included in the salary fund for the county court.) However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the county court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. This court has held that the purpose of the County Budget Law was 'to compel * * * * county courts to

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comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. 2d 340, 342.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

The holding above is that the Legislature has the right to fix the salaries of county officers and that the county court must include such salaries, in full, in the county budget. In the instant case, the Legislature did not itself fix the salaries of deputy sheriffs, but it did delegate to circuit judges power to fix such salaries. That the Legislature had the right and power to make such a delegation of authority does not appear to be questioned and, as we stated above, this department by the opinion referred to, a copy of which is enclosed, has held that the circuit judge does have such authority. Our position in the instant case is that the act of the Legislature delegating to a circuit judge the power to fix the salary of a deputy sheriff is, after the circuit judge fixed the salary, the same thing as if the Legislature itself had fixed the salary, in which event the salary would be automatically included in the county budget even though, as we held in the Welborn case, the salary increase did not

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become effective until July following the fixing of the budget the previous February. If this were not true, then the Legislative act increasing the salary of a county official effective as of July 7, in the Welborn case, would be a nullity, and the increase in salary of the deputy sheriff in the instant case would likewise be a nullity, neither of which could have been the intention of the Legislature.

If we are correct in holding, as we do above, that the salary increase of the deputy sheriff ordered by the circuit judge in September is automatically included in the county budget for that year, then in answer to your first question, we reply that there is no need to reconcile Sections 57.230 and 57.250, RSMo 1949, with Sections 50.670 through 50.740, inclusive, RSMo 1949, because there is no conflict.

Your next question, so far as it relates to deputy sheriffs, is: "Does the county court have to pay this salary increase if it does not have enough money to do so?"

Upon the basis of our holding above that the increase in the salary of the deputy sheriff is automatically included in the county budget for the year in which the increase is made, we direct your attention to the following portion of the opinion in the Gill case, supra, l.c. 668:

"Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

We believe that the increase in the salary of the deputy sheriff would be payable out of Class 4 of the county budget. Class 4 of Section 50.710, RSMo 1949, states:

"Pay or salaries of officers and office expense. List each office separately

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and the deputy hire separately. (County clerk shall prepare estimate for the county court but his failure does not excuse the court.)"

Payment out of Class 4 would appear to be proper since the salary of the deputy sheriff is automatically budgeted and is payment of the salary of a county officer. Enclosed is a copy of an opinion rendered by this department on August 28, 1951, to Honorable W. H. Holmes, State Auditor, which opinion affirms this holding. If no funds are available in Class 4 for this purpose, then we believe that funds should be transferred to Class 4 from Class 5, if there are funds in Class 5, and if there are no funds in Class 5 and if there are funds in Class 6, then such funds in Class 6 should be transferred to Class 4. This is indicated by the last quoted portion of the opinion in the Gill case which holds that discretionary obligations (which are those in Classes 5 and 6) must give way to the "mandatory obligation" to pay the salaries of county officers. We understand from your letter that the county has funds, either in Class 5 and/or 6 or funds which are not budgeted, which can be placed in Class 4, since you state that: "The county is solvent and there is a balance on hand in the general current fund at this time."

Your third question is: "Does the county court have to go ahead and pay this increase in salary as long as there is money in the county treasury with which to pay it?"

We believe that the answer to this question is in the affirmative, for the reasons given above in answer to your second question.

Your fourth question is: "If all funds are used up before the end of the year, will not all warrants then outstanding be pro-rated or else protested, including the warrants given to the deputy sheriff?"

In answer to the above question, we again call attention to the last above quoted portion of the Gill case, which states: "Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance." Also: "We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers all salaries fixed by the Legislature, does not affect the county's obligation to pay them."

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Certainly, if the county court issued a warrant for the full salary of the deputy sheriff and there were no funds with which to pay the warrant, or not funds enough to pay it in full, payment would be refused by the county treasurer. Section 50.210, RSMo 1949, states:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

Your fifth question is: "Upon what basis, if any, would the county court be justified in refusing to pay the salary increase to the deputy sheriff as ordered by the circuit court?"

Section 57.250, RSMo 1949, in part, states:

"* * * The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county.* * *"

(Underscoring ours.)

The above is the only limitation imposed upon a circuit judge in the matter of fixing the number and compensation of deputy sheriffs, if indeed the above could be termed a limitation. If it is a limitation, it is not one which could be invoked by the county court. It would seem to us that there would never be any basis upon which the county court would be justified in refusing to pay the salary increase of a deputy sheriff ordered by the circuit judge.

We would now direct your attention to the situation of the deputy circuit clerk. You state that on September 29, 1951, the circuit judge ordered the salary of the deputy circuit clerk raised from \$110 per month to \$125 per month, to be effective as of September 1st. Section 483.345, RSMo 1949, provides for the appointment of deputy circuit clerks and their compensation. That section states:

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"Every circuit clerk in counties of the third class shall be entitled to such number of deputies and assistants to be appointed by such official with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of the duties of his office. The judge of the circuit court, in his order permitting the circuit clerk to appoint deputies or assistants, shall fix the compensation of such deputies or assistants which order shall designate the period of time such deputies or assistants may be employed. Every such order shall be entered on record, and a certified copy thereof shall be filed in the office of the county clerk. The circuit clerk may, at any time discharge any deputy or assistant, and may regulate the time of his or her employment and the circuit court may at any time modify or rescind its order permitting an appointment to be made."

It appears clear to us from the language of the above section that deputy circuit clerks may be appointed by the circuit clerk at any time during his term of office, with the approval of the circuit judge, and that their salary is to be fixed by the circuit judge at the time of their appointment. The question which we have to answer here is whether, when a deputy circuit clerk has been appointed under the conditions set forth above, a circuit judge may subsequently order an increase in the salary of the deputy circuit clerk.

Although the above section might well be more clear regarding the power of the circuit judge to increase the salary of a deputy circuit clerk subsequent to his appointment, we believe that the above section, which allows the circuit judge at any time to modify or rescind its order permitting the appointment of deputy circuit clerks and fixing their compensation, does give to the circuit judge the power to change the compensation of such deputy circuit clerks subsequent to their appointments. It would appear that the power to modify such order would include the power to change the number of such deputy circuit clerks or the amount of their compensation. It would be unreasonable to suppose that the circuit court could not modify the order as to

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compensation when the order could be rescinded in its entirety and a new order made allowing the appointment of deputies and fixing a different compensation.

In regard to deputy circuit clerks, you next ask us whether a circuit judge has the authority on September 29 to make an order raising the salary of a deputy circuit clerk to be effective as of September 1st.

In regard to the above, we would direct your attention to Article III, Section 39 of the Constitution of Missouri, 1945, the parts of which, pertinent to this matter, state:

"Sec. 39. Limitations on Power of Assembly.-
The general assembly shall not have power:

* * * *

"(3) Extra Compensation to Public Employees or Contractors.- 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;"

In view of paragraph (3), quoted above, we do not believe that a circuit judge could by an order on September 29, make an order increasing the salary of a deputy circuit clerk as of September 1st, but that such order for an increase in such salary would become effective as of the day upon which such order was issued.

CONCLUSION

It is the opinion of this department that:

(1) A circuit judge has the power, at any time, to make an order increasing the salary of a deputy sheriff and/or a deputy circuit clerk.

(2) A county court is obligated to pay salary increases of deputy sheriffs and/or deputy circuit clerks ordered by a circuit judge.

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(3) A county court is obligated to issue warrants covering such salary increases even though there is not money immediately available for such purpose.

(4) Warrants issued to deputy sheriffs and/or deputy circuit clerks will be protested if there are no funds available with which to pay them.

(5) A county court would not be justified in refusing to pay a salary increase ordered by a circuit judge.

(6) A circuit judge may not make an order for a salary increase of a deputy circuit clerk which is retroactive.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

Enclosures (3).

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