

CONSTITUTIONAL LAW: Circuit clerk of third class county
having assessed valuation in excess of
CIRCUIT CLERK: \$50,000,000 shall perform duties as
ex officio parole commissioner and
COUNTIES: receive maximum compensation as provided
for third class counties under S.C.S.S.B.
No. 227, enacted by the 66th General
Assembly.

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FILED

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Honorable Robert G. Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion upon questions raised in the attached letter of the Circuit Clerk of Clay County, Missouri, Mr. Clifford G. Hall. That letter requests a construction of S.C.S.S.B. No. 227 as passed by the 66th General Assembly, particularly as it applies to the clerk of the circuit court in a third class county having an assessed valuation exceeding \$50,000,000. The pertinent part of said request reads:

"In setting up compensation in the various counties the Bill states as follows to-wit: Counties with assessed valuation of 25 million dollars or over and less than 50 million dollars, nine hundred dollars per year. Clay County's assessed valuation for 1951 was 63 million dollars, being the fourth year with an assessed valuation of over 50 million dollars. It is my contention that we being a third class County and third class Counties having an assessed valuation of less than 50 million, even though we are on our fourth year with an assessed valuation of over 50 million, my office would come under the clause which includes Counties from 25 million to 50 million dollars, until such time as we become a 2nd Class County.

"If that isn't correct then I would like to have an official opinion on the constitutionality of a bill making all Circuit

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Clerks in third and fourth class Counties Parole Commissioners and not including compensation for that duty to one Circuit Clerk.

"In the event it is constitutional will I be compelled to perform that duty in this, the busiest Circuit Clerk's office in the Third Class in the State, without compensation."

The title of the bill clearly indicates that it applies to all circuit clerks of third and fourth class counties relative to providing for a parole commissioner in such counties and fixing his duties and compensation. Thus the title of the act reads as follows:

"AN ACT

"Providing for a parole commissioner in counties of the third and fourth class, and fixing his duties and compensation."

In the body of the act certain duties are provided for to be performed by all circuit clerks of third and fourth class counties acting as ex officio parole commissioners. The question which you have presented requires our determination whether or not the Circuit Clerk of Clay County, which has an assessed valuation in excess of \$50,000,000, would be entitled to any compensation for performing the duties of parole commissioner in view of Section 6 of the act, which reads:

"For the performance of all duties imposed upon him as parole commissioner, the clerk of the circuit court shall receive, in addition to all other compensation now allowed by law, the following compensation, payable out of the county treasury:

"In fourth class counties where the assessed valuation is less than five million dollars, six hundred dollars.

"In fourth class counties where the assessed valuation is more than five million dollars, seven hundred dollars.

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"In third class counties where the assessed valuation is more than ten million dollars but less than twenty-five million dollars, eight hundred dollars.

"In third class counties where the assessed valuation is more than twenty-five million dollars but less than fifty million dollars, nine hundred dollars."

Section 8, Article VI of the Constitution of Missouri, is a mandate for the Legislature to pass legislation for the organization and classification of counties in this state, with the limitation that the number of classes shall not exceed four and that a law applicable to any county shall apply to all counties in the class to which such county belongs. Thus the constitutional provision reads:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

In compliance with the above constitutional provision the General Assembly enacted Section 48.020, RSMo 1949, which places all counties within four classes and provides, in part, that those counties now having or which may hereafter have an assessed valuation of \$10,000,000 and less than \$50,000,000 shall be third class counties. Section 48.020 provides:

"All counties of this state are hereby classified, for the purpose of establishing organization and powers in accordance with the provisions of section 8, article VI, Constitution of Missouri, into four classes as follows:

"Class 1. All counties now having or which may hereafter have an assessed valuation of

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three hundred million dollars and over shall be in the first class.

"Class 2. All counties now having or which may hereafter have an assessed valuation of fifty million dollars and less than three hundred million dollars shall be in the second class.

"Class 3. All counties now having or which may hereafter have an assessed valuation of ten million dollars and less than fifty million dollars shall be in the third class.

"Class 4. All counties now having or which may hereafter have an assessed valuation of less than ten million dollars shall be in the fourth class."

Although Clay County has had for the last four years an assessed valuation in excess of \$50,000,000, which is the maximum assessment for a third class county, it still must be classified as a county of the third class. Under Section 48.030, RSMo 1949, Clay County must be classified as a third class county until its assessed valuation in excess of \$50,000,000 has occurred for five consecutive years. Section 48.030 thus provides:

"For the purpose of determining the initial class of the various counties, the assessed valuations of the respective counties as set forth on pages 333 to 400 of the 'Journal of the Board of Equalization of the State of Missouri for the Year Ending December 31, 1944' shall be used; provided, however, that hereafter no county shall be deemed as moving from a lower class to a higher class or from a higher class to a lower class until the assessed valuation of said county shall have been such as to place it in such other class for five successive years; provided further, that the change from one classification to another shall become effective at the beginning of the county fiscal year following the next general election after the certification by the state equalizing agency for the fifth successive year that said county possesses an

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assessed valuation placing it in another class; provided further, that if a general election shall be held between the date of such certification and the end of the current fiscal year, such change of classification shall not become effective until the beginning of the county fiscal year following the next succeeding general election."

Consequently, in construing S.C.S.S.B. No. 227, Clay County must be considered a county of the third class.

In answering the question which you have presented our task is to construe the above bill, applying the appropriate rules of statutory construction.

The paramount rule to be followed in construing a statute is to ascertain the intention of the Legislature and give a construction of the law in compliance therewith. The appellate courts of this state have many times so held.

Another rule is to favor a construction which would tend to avoid injustice and absurd results and to apply a construction which would be in harmony with reason.

In *Fischbach Brewing Co. v. City of St. Louis*, 231 Mo. App. 793, 95 S.W. (2d) 335, l.c. 339, the court said:

" * * * A cardinal rule of statutory construction is to give effect to the legislative intent, where ascertainable; another is to favor such a construction which would tend to avoid injustice, oppression, and absurd and confiscatory results and be in harmony with the rule of reason. * * *"

In *State ex rel. Hammer v. Wiggins Ferry Co.*, 208 Mo. 622, 106 S.W. 1005, the court, at Mo. l.c. 640, said:

" * * * That which is within the meaning of a statute is as much a part of it as if it were written therein. Judge Scott stated the same rule in this language: 'A thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter.' * * *"

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In *Stack v. General Baking Co.*, 283 Mo. 396, 223 S.W. 89, the court set out several rules of statutory construction which must be followed in interpreting the statute. Thus, at S.W. 93, it was said:

"As said by this court in the case of *Keeney v. McVoy*, 206 Mo. loc. cit. 68, 103 S.W. 946, quoting from an earlier case:

"The letter of a statute may be enlarged or restrained, according to the true intent of the framers of the law."

* * * * *

"In case of *St. Louis v. Christian Brothers College*, 257 Mo. 541, loc. cit. 552, 165 S.W. 1057, it was held:

"It is permissible in arriving at the intent of the lawmaker to either expand or limit the meaning of his words, when it becomes necessary to make the law harmonize with reason."

"It was said by Judge Lamm in case of *Rutter v. Carothers*, 223 Mo. 631, loc. cit. 643, 122 S.W. 1056, 1060:

"Those are recognized canons of construction which ordain that the naked letter of the law must gently and a little give way to its obvious intendment; that those who interpret the laws must not impute injustice to the lawmaker by so interpreting his language as to unnecessarily produce harsh and unreasonable results, or impute to him a disposition callous to natural justice."

"Judge Walker held, in the case of *Johnston v. Ragan*, 265 Mo. 420, loc. cit. 435, 178 S.W. 159, 163:

"Statutes are not to be construed so as to result in an absurdity or to impose unnecessary burdens."

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In State ex rel. Webster Groves Sanitary Sewer Dist. v. Smith, 342 Mo. 365, 115 S.W. (2d) 816, the Supreme Court declared that the strict letter of the act must yield to the manifest intent of the Legislature. So, at S.W. l.c. 823, the court said:

" * * * In construing an act, the true intention of the framers must be followed, and where necessary the strict letter of the act must yield to the manifest intent of the Legislature. * * *"

As heretofore pointed out in the title of the act we are considering, the clearly declared purpose of the law is to provide for a parole commissioner in all counties of the third and fourth class, fix his duties and provide for his compensation for performing said duties in all of said counties. The performance of the duties of parole commissioner is imposed on all circuit clerks of third class counties, including Clay County, although its assessed valuation is in excess of \$50,000,000.

In reading Section 6 of the act, the manifest intent of the Legislature was to increase the compensation of the circuit clerk for performing the duties of parole commissioner in counties with the greater assessed valuation. Consequently, to construe the act as to preclude the Circuit Clerk of Clay County from receiving any compensation for performing said duties would be inimical to the legislative intent. It would border on absurdity to say that the Legislature intended to fix a compensation for performing the duties of parole commissioner in counties of lesser assessed valuation, but, without justification or reason, intended to deny compensation for performing the same duties in the third class county of the highest assessed valuation.

Therefore, to give a just and reasonable construction to the act, and one which we believe is consonant with the intent of the lawmakers, we must conclude that the Circuit Clerk of Clay County is entitled to the maximum compensation as provided in the act for performing the duties of parole commissioner in third class counties.

A further basis for giving such interpretation to the act is to avoid giving it a construction as would render it unconstitutional.

The appellate courts of this state have many times held that statutes must, if reasonably possible, be construed to be constitutional, and that if there are two possible constructions,

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the one which would uphold its validity would be adopted rather than the one which would defeat it. *Baerveldt & Honig Const. Co. v. Dye Candy Co.*, 357 Mo. 1072, 212 S.W. (2d) 65; *Zinn v. City of Steelville*, 351 Mo. 413, 173 S.W. (2d) 398; *Kelly v. Howard*, 233 Mo. App. 474, 123 S.W. (2d) 584.

In the case of *Colley v. Jasper Co.*, 337 Mo. 503, 85 S.W. (2d) 57, the Supreme Court of Missouri was considering the constitutionality of a law fixing the compensation of county superintendents of schools in counties having a population over 100,000 and less than 350,000 at \$6,000 per year. Under this classification the law only applied to Buchanan, Greene, Jasper and St. Louis counties, and it did not apply to Jackson County which had a population in excess of 350,000. Consequently, in Jackson County the county superintendent could only be paid \$2,250 per year under another general law fixing this amount of compensation in counties having a population over 50,000. The court first pointed out that the duties to be performed by such official in all five counties were essentially the same and that there was no reasonable basis for classifying Jackson County in a lower bracket insofar as fixing the compensation of the county superintendent of schools was concerned. The court then declared the act unconstitutional as being a special law prohibited by Subdivisions 32 and 33 of Section 53 of Article IV of the Constitution of 1875. These constitutional provisions are contained in our 1945 Constitution, without change in substance, in Subdivision 30 of Section 40 of Article III and Section 41 of Article III. At S.W. l.c. 62 the court said:

" * * * We are unable to find in the matters urged by appellant or in the facts and data submitted by the record any substantial differences in the situation and conditions pertaining to the office of county superintendent of schools in Jackson county as compared with the counties coming within the operation of section 9404 that could afford a reasonable or sound basis for classifying Jackson county in a lower bracket as regards the county superintendent's salary than the counties included in the act. That is sufficient to condemn the act in question as a special law prohibited by subdivisions 32 and 33, section 53, article 4, of the Constitution. And we think it may well be said, also, that, in view of the facts and circumstances above mentioned, said act is not

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uniform in its operation. Whether or not a general law could be made applicable is by express provision of the Constitution a judicial question. That it could be we think is clear, as evidenced by the fact that a general law, section 9463 (Mo. St. Ann. Sec. 9463, p. 7257), had been enacted and was in force for many years prior to the passage of section 9464. * * * It is our opinion, and we hold, that said section 9464 (Mo. St. Ann. Sec. 9464, p. 7258) is unconstitutional and void. * * *

In the act we are considering there would be no sound basis for excluding Clay County, a county of the third class, from coming within its provisions insofar as compensating the circuit clerk acting as parole commissioner is concerned. The circuit clerk in Clay County will be performing essentially the same duties while acting as parole commissioner as will the circuit clerks in other counties of the third class.

Were we to determine the legislative intent as excluding Clay County we would be constrained to seriously consider that portion of the act providing for compensation as special legislation prohibited by the Constitution, and if such was true, such portion of the act would be unconstitutional.

In line with the authorities heretofore cited we must give a construction to the law in question rendering it constitutional, if at all possible. We firmly believe it was the intent of the Legislature to provide compensation for circuit clerks acting as parole commissioner in all third class counties. This intent must be followed even if it necessitates the strict letter of the act yielding thereto.

CONCLUSION

In the premises, it is the opinion of this department that under S.C.S.S.B. No. 227 the Circuit Clerk of Clay County is required to perform the additional duties as ex officio parole

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commissioner, and for the performance of said duties he is entitled to receive the maximum compensation provided for in the act for third class counties.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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