

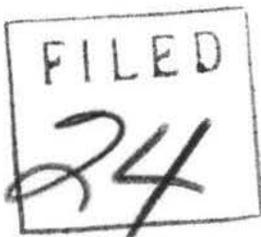
CONSTITUTIONAL LAW:  
PROBATE JUDGES AND EX OFFICIO:  
MAGISTRATES:

Bill to provide increase in salary  
for probate judges where an activated  
armed services camp is located is  
constitutional.

XXXXXXXXXX

JOHN M. DALTON

March 24, 1953



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J.C. Johnson

Honorable J. Ellis Dodds  
Representative, Pulaski County  
Capitol Building  
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department regarding the constitutionality of a bill proposed to be introduced in the Missouri Senate. The proposed bill reads as follows:

"Section 1. 1. In all counties which now or may hereafter have a population of 30,000 or less inhabitants and in which there is now, or may hereafter be, located an activated armed services camp having a personnel of at least 10,000, the probate judge and ex officio magistrate, shall, in addition to the salary now provided by law, receive additional compensation so long as an activated armed service camp is in said county in an amount equal to 50 per cent of that now provided by law; provided however that no such judge shall receive more than \$6,000 per annum.

"2. The additional compensation provided for in this section shall be paid in the same manner as now provided by law for the payment of such judges' salaries."

Several constitutional provisions might give rise to questions relative to the validity of this bill. (Unless otherwise noted, constitutional provisions referred to are

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Missouri Constitution of 1945).

1. Increase in compensation during term.

Section 24 of Article V of the Constitution provides in part:

"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."

(Emphasis ours.)

Section 13 of Article VII provides:

"The compensation of state, county and municipal offices shall not be increased during the term of office; nor shall the term of any offices be extended."

The question of application of Section 13 of Article VII to increase in compensation for members of the judiciary during their terms was considered quite thoroughly in an opinion prepared by Assistant Attorney General Harry H. Kay, dated July 28, 1947, addressed to Hon. B. H. Howard. The conclusion was reached that, in view of Section 24 of Article V, above quoted, there was no constitutional prohibition against increasing the salaries of members of the judiciary during their terms. The conclusion there reached disposes of constitutional objections on such grounds to the present bill. For your information, a copy of said opinion is enclosed herewith.

2. Special Law.

Section 40 of Article III of the Constitution provides in part:

"The general assembly shall not pass any local or special law:

\* \* \*

(30) where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially

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determined without regard to any legislative assertion on that subject;"

The proposed bill applies only to counties having a population of less than 30,000 inhabitants in which an activated armed services camp is located. Does this make it a special law such as is prohibited by Section 41 of Article III? In the case of *State ex rel. v Smith*, 353 Mo. 807, 184 S.W. (2d) 593, the court considered the question of validity of a statutory scheme for fire protection districts in counties of 200,000 to 400,000 inhabitants. The act was attacked as a special law. In upholding the act, the court stated, at 184 S.W. (2d) 1. c. 595:

"The question of classification is primarily for the Legislature. If there is any reasonable basis for the classification made the court must sustain it.

\* \* \*

St. Louis County is the only county now within the population bracket stated in the act. Such fact alone does not make the act a special law for the reason the act will also apply to other counties which will attain the same population in the future. Where an act is potentially applicable to other counties which may come into the same class it is not a local law."

In the case of *State ex inf. Wallach v. Loesch, et al.*, 350 Mo. 989, 169 S.W. (2d) 675, an act was attacked as a special law which provided for county zoning and planning in "any county in which, or in a county immediately adjoining which, there is now or may hereafter be located and constructed any permanent camp, cantonment, post, fort or training area of the United States Army, or any ordinance or ammunition plant or factory owned and operated by the United States or owned by the United States and operated under contract with the United States, except any county which now contains or may hereafter contain a population of not less than four

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hundred thousand (400,000) nor more than six hundred thousand (600,000) inhabitants,\* \* \*" Laws of Missouri, 1941, p. 465, Section 15348.

In upholding the act, the court stated at 169 S.W. (2d) 1.c. 680:

"Appellant also asserts that counties such as Pulaski are arbitrarily thrown in with large counties like St. Louis county merely because they may have an army camp within them or may adjoin a county in which there is such a camp. It must not be overlooked that providing for the health and welfare of a rapidly growing community, caused by the location of an army plant, etc., was the very purpose for which the law was enacted. To take care of an emergency arising from such a mushroom growth section 15351a was enacted so that the local authorities could protect the health and safety of the people. We think the classification is founded upon a sound basis."

We are of the opinion that the legislature's determination that the duties of the probate judge and ex officio magistrate in counties in which an activated armed services camp is situated increase to such an extent that such official is entitled to receive additional compensation would be sufficient upon which to base a classification for such purpose.

3. Lack of uniformity of salary in each class of counties.

Section 11 of Article VI of the Constitution provides,

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in part:

"Except in counties which frame, adopt and amend a charter for their own government, the compensation of all county officers shall be prescribed by law uniform in operation in each class of counties."

The proposed bill does not refer to the constitutional classification of counties at all. If this is a defect which would render it invalid, the same would be true of Section 482.150, RSMo 1951 Supp., fixing the compensation of magistrates generally, which sets up a system that entirely ignores the constitutional classification of counties (Section 48.020 RSMo 1949).

It will be noted that Section 11 of Article VI refers to "compensation of county officers." In the case of State ex rel. Buchanan County v. Imel, 242 Mo. 293, 146 S.W. 783, the question presented was whether or not the probate judge of Buchanan County was within Section 12 of Article IX of the Constitution of 1875 which provided: "The General Assembly shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population." That provision was found in the article headed "Counties, Cities and Towns." Article VI of the 1945 Constitution is entitled "Local Government." In the Imel case, the court stated (242 Mo. 1.c. 301):

"(W)e observe that said section 12 of article 9 of our Missouri Constitution, declaring that all laws regulating the fees of 'county officers' shall be uniform in their operation, is not found in that article of the Constitution which creates and prescribes the duties and jurisdiction of probate judges; but is part of article 9, entitled 'Counties, Cities and Towns.'

"In this last named article (9), nothing is found specifically referring to probate

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judges, their duties or compensation; but instead, that article treats of the organization and change of boundaries of counties, cities and townships (sections 1 to 9), the offices of sheriff and coroner (sections 10 and 11), a limitation on the fees of executive and ministerial officers of counties and municipalities (section 13), the creation of new county, township and municipal officers by the General Assembly (section 14), and other provisions for the government and consolidation and enlargement of cities. In this article we would not expect to find any provision respecting or affecting the judiciary of the State.

"Judges of the probate court are not charged with the performance of any governmental functions of the counties for which they are elected; in fact, some of them do not have jurisdiction coextensive with the counties where their offices are held. Their functions are to administer the laws pertaining to estates of deceased persons, minors and persons of unsound mind.

"From the context of said section 12 of article 9, supra, it will be seen that there is very little if any better reason for classifying probate judges as 'county officers' than for so designating judges of the circuit court when their circuits are composed of a single county.

"After a careful review of said section 12 of article 9 of the Constitution of Missouri, we are fully convinced that it was not intended to embrace or include judges of probate courts; \* \* \*".

In view of the holding in this case, we are of the opinion that Section 11 of Article VI of the 1945 Constitution is not applicable to probate judges and ex officio magistrates, and, therefore, that section would not affect the validity of the proposed bill.

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4. Application of Section 8 of Article VI.

Section 8 of Article VI of the Constitution provides:

"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."

The proposed bill applies to the compensation of probate judges and ex officio magistrates. This compensation is paid by the state. Section 482.150, Mo. R.S., supra. This would not appear to be a matter governing the organization and powers of counties, and, therefore Section 8 of Article VI would not be applicable. State ex inf. Taylor v. Kiburz, 357 Mo. 309, 208 S.W. (2d) 285, 287; Inter-City Fire Protection Dist. v. Gamball, 360 Mo. 924, 231 S.W. (2d) 193, 197 (1). Further, under the reasoning of the Imel case, supra, none of the limitations found in Article VI is applicable to legislation relative to the judiciary.

This department is of course not concerned with the wisdom of this bill or the difficulty of its practical application. We do point out, however, that some difficulty might arise by reason of the requirement that the armed services camp must have a personnel of at least 10,000. It appears to us that some difficulty might arise in determining the number of personnel based in a particular camp.

CONCLUSION

Therefore, this department is of the opinion that a proposed bill to provide for the increase in compensation for probate judges and ex officio magistrates in counties of less than 30,000 inhabitants in which an activated armed services camp

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having a personnel of at least 10,000 persons is located, if enacted into law, would not violate the Missouri Constitution.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Very truly yours,

JOHN M. DALTON  
Attorney General

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