

COUNTIES OF FIRST CLASS: Salaries of constables in St. Louis County
UNDER CHARTER FORM OF are set by County Charter.
GOVERNMENT:
COUNTY CHARTER:
CONSTABLE'S SALARIES:
CONSTITUTION: (Secs.
18(e) and 18(b) of
Article VI.)

12-1-52

November 20, 1952



Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Attention: Mr. Wm. J. Hough,
First Assistant Prosecuting Attorney

Dear Sir:

This will acknowledge receipt of your recent request for an opinion of this office, the pertinent part of said request is as follows:

"Would you kindly advise this office as to whether or not the County Counsel of St. Louis County can increase the salaries of Constables in the four districts within St. Louis County or whether it would be necessary to have legislative enactment to increase the salaries."

We believe that statute involved in the proposition set forth to be Section 63.085, RSMo 1949, (Cumulative Supplement, 1951). Said section reads as follows:

"Compensation of constable--deputies, number and compensation (St. Louis county).--In all counties of the first class operating under a charter form of government the constable elected hereunder shall receive a salary of three hundred dollars per month plus fifty dollars per month transportation allowance, payable at the end of each month out of the treasury of such county. Every Constable shall have power to appoint not to exceed eight deputies, when authorized by order of the county court, for whose conduct he shall be answerable and such appointments shall be in writing, and said appointments shall be filed, in the office of the clerk of the county court of such county. Such deputies shall receive a salary of two hundred dollars per month plus

Hon. Stanley Wallach

fifty dollars per month transportation allowance, to be paid out of the county treasury of such county, in like manner as provided herein in cases of constables."

This, of course, is an attempt by the Legislature to set the salary and transportation allowance of constables in counties of the first class operating under charter form of government.

It is our opinion that this enactment is unconstitutional and void in view of Section 18(e), Article VI, Missouri Constitution of 1945, which reads as follows:

"Sec. 18(e). Laws Affecting Charter Counties-- Limitations. Laws shall be enacted providing for free and open elections in such counties, and laws may be enacted providing the number and salaries of the judicial officers therein as provided by this Constitution and by law, but no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees."

The above set out section strictly limits the Legislature so that it may only pass laws "providing for free and open elections" and "providing the number and salaries of the judicial officers therein" and further that the Legislature shall pass no law that "shall provide for any other office or employee of the county or fix the salary of any of its officers or employees." Therefore the Legislature can only pass laws relating to elections and the number of judicial officers and their salaries in first class counties under charter form of government.

Section 18(b), Article VI of the Constitution of Missouri, 1945, reads as follows:

"Sec. 18(b). Provisions Required in County Charters.--The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and laws of the state."

The above section provides that the "Charter" of counties under charter form of government shall provide for "salaries of the county officers."

A constable does not hold a judicial office. *Queatham v.*

Hon. Stanley Wallach

Modern Woodmen of America, 148 Mo. App. 33, 127 S.W. 651, State ex rel. Heimburger v. Wells, 210 Mo. 601, 109 S.W. 758. Therefore, he is a county officer whose term of office and salary should be provided for in the county charter.

CONCLUSION

It is, therefore, the opinion of this department that Section 63.085, RSMo 1949, (1951 Cumulative Supplement) is unconstitutional and void as being violative of Section 18(e) Article VI, Constitution of Missouri, 1945, supra, in charter counties of the 1st class; that the charter in these counties shall provide for the office of constable, manner of his selection, term of office and salary in accordance with Section 18(b), Article VI, Missouri Constitution, 1945, supra.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General