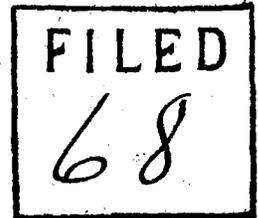


CONTINGENT FUND OF
PROSECUTING ATTORNEYS
COUNTIES OF FIRST CLASS:

Section 13470, R.S. Mo., 1939, in-
consistent with Article VI, Section
13, Constitution, 1945, therefore,
ineffective after July 1, 1946.

CONSTITUTION:

July 26, 1946



Honorable Michael W. O'Hern
Prosecuting Attorney
Jackson County
Courthouse
Kansas City, Missouri

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Dear Sir:

We hereby acknowledge receipt of your request for an
opinion, which reads as follows:

"I would like to get a little information
concerning the contingent fund of the
office of the Prosecuting Attorney of
Jackson County, Missouri, and I am of the
opinion that Section 13470, Revised Statutes
of Missouri 1939 applies to Jackson County.

"At the present time there is probably
\$600.00 in the contingent fund and on July
8th, there is a murder case especially set
in this county before Judge Broadus and
it is a case that will require considerable
expense in bringing witnesses from different
parts of the country.

"Today I was informed by Mr. Kirby, County
Treasurer, that he was of the opinion that
on and after July 1st of this year no checks
would be honored on this contingent fund.
If this is true, it will certainly handicap
this office in the preparation of this very
important trial.

"Would you kindly let me know at once if in
your opinion under the existing circumstances
that the County Treasurer would be justified
in refusing to honor our checks. I might
state for your benefit that the County Treasur-
er has no intention in any way of tying the

hands of my office but he does not want to honor the checks if the law prohibits him of doing it after July 1st.

"Would you let me know what your opinion is concerning this matter."

Section 13470, R.S. Mo. 1939, referred to in your request, provides:

"The treasurer of said county shall set aside the prosecuting attorney's fees, so turned into the treasury of said county, to be used as a contingent fund for the prosecuting attorney for the payment of the incidental expenses in bringing parties and witnesses from other states or counties and in properly preparing cases for trial, attending trial on changes of venue, attending at the taking of depositions, in printing briefs, and appearing before the appellate courts of the state, and generally such expenses as he may be put to in the proper and vigorous prosecution of the duties of his office. Such fund shall be paid out as needed to the prosecuting attorney by the said county treasurer out of said fund in the treasury of said county, not exceeding two thousand five hundred dollars in any year, upon warrant of the prosecuting attorney, approved and signed by the judges of the criminal court of said county. At the end of each year said county treasurer shall pay into the general revenue fund of said county any balance that may be in his hands from fees, so collected, exceeding the sum of one thousand dollars."

The problem presented is this--is Section 13470, R.S. Mo. 1939, effective after July 1st so that the Treasurer of Jackson County should continue to honor the warrants of the Prosecuting Attorney drawn on the contingent fund provided for therein?

In order to arrive at the solution to this question, we must determine whether this section is consistent with the Constitution of Missouri, 1945. If it is inconsistent, Section 2 of the Schedule of that Constitution causes Section 13470, R.S. Mo. 1939, to be ineffective. Section 2 of the Schedule provides:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

The particular section of the Missouri Constitution of 1945 with which we are immediately confronted is Article VI, Section 13, wherein it is stated:

"All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law." (Underscoring ours.)

In the application of this latter constitutional provision, we must determine the status of the contingent fund referred to in Section 13470, R.S. Mo. 1939, supra. This particular fund has never received an interpretation in the courts of our state. In our search for a definition of this type of fund, we

have gone to other jurisdictions, and find, in the case of First National Bank of Norman v. City of Norman, 75 P. (2d) 1109, 1. c. 1110, 182 Okla. 7, the following statement:

"In general terms, where such funds exist, a contingent fund is ordinarily a fund which is set up from which to pay items of expense which will necessarily arise during the year, but which cannot appropriately be classified under any of the specific purposes for which other taxes are levied. 1 Pope's Legal Definitions, 273; People v. Cairo, V. & C. Ry. Co., 247 Ill. 360, 363, 93 N.E. 405. See, also, McQuillin on Municipal Corporations, vol. 5, Sec. 2179; State v. Kurtz, 110 Ohio St. 332, 144 N.E. 120; Mitchell v. St. Paul, 114 Minn. 141, 130 N.W. 66; Heston v. Atlantic City, 93 N.J.L. 317, 107 A. 820."

In view of this definition, which is supported by the authorities cited therein, we conclude that the contingent fund established by Section 13470, R.S. Mo. 1939, does not constitute a part of the general revenue fund, since it cannot appropriately be classified under any of the specific purposes for which other taxes are levied. Having thus concluded, we hold that Section 13470, R.S. Mo. 1939, is in conflict with Article VI, Section 13, Constitution of Missouri of 1945; and, under the operation of Section 2 of the Schedule, it is, therefore, ineffective after July 1, 1946. The fees collected by the office of the prosecuting attorney of Jackson County should be paid into the general revenue fund. The County Treasurer of Jackson County should, therefore, not continue to honor the warrants of the Prosecuting Attorney which were, prior to July 1, 1946, payable from the contingent fund as provided in Section 13470, R.S. Mo. 1939.

Although we believe the above is sufficient, we will point out another discrepancy between Section 13470, R.S. Mo. 1939, and the Constitution of Missouri, 1945. Article VI, Section 8, thereof 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."

It is to be noted that Section 13470 commences, "The treasurer of said county * * *," which refers back to Section 13467, Laws of Mo. 1941, page 533, Section 1, which provides in part: "In all counties in this state which now have or which may hereafter have a population of not less than 350,000 nor more than 750,000 inhabitants according to the last preceding Federal decennial census * * *."

By virtue of the mandate laid down by Article VI, Section 8, supra, the Legislature had enacted House Bill No. 476 classifying counties by evaluation. Any law applicable to one county of a particular class is also applicable to all other counties of that class. Section 13470 does not fall within any of the classes so established, since it is based upon population rather than evaluation, and is, therefore, ineffective. Jackson County is now a county of the first class for legislative purposes, and a law applicable to counties of a certain population does not meet the dictates of Article VI, Section 8, Constitution of Missouri, 1945.

CONCLUSION

It is the opinion of this department that Section 13470, R.S. Mo. 1939, is inconsistent with Article VI, Section 13, Constitution of Missouri, 1945; and, applying Section 2 of the Schedule, Constitution of Missouri, 1945, is ineffective after July 1, 1946.

Hon. Michael W. O'Hern

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It is our further opinion that Section 13470, R.S. Mo. 1939, is ineffective, since it does not meet the dictates of Article VI, Section 8, Constitution of Missouri, 1945, and House Bill No. 476 enacted by the 63rd General Assembly.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JMA:LR