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**CIRCUIT COURT JUDGES: Salaries — fixing of additional salary payable by counties.**

The prohibition of Section 18 of Article VI of the Constitution against decreasing the salary of a circuit judge during a term of office except and only to the extent of a general salary reduction in all other branches of government is applicable to the salary paid by the county as well as the salary paid by the state. Inasmuch as the salary payable to circuit judges must be uniform, the amount of salary payable to the judges by the county in a multi-judge circuit cannot be decreased during the term of any judge of that circuit except and only to the extent of a general salary reduction in all other branches of county government.

No. 4561

December 30, 1966.

Mr. Donald A. Burge  
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Your request for opinion cites Act 252, P.A. 1966, by which Section 555 of Act 236, P.A. 1961, M.S.A. Cur. Mat. § 27A.555, p. 426, is amended to increase effective January 1, 1967, the amount of the salary payable by the state to circuit judges from \$15,000 to \$20,000 per annum. You advise that presently the judges of the Kalamazoo County circuit are each receiving an additional annual salary paid by the county in the amount of \$8,250. Further:

“\* \* \* It is proposed that the salary paid to Kalamazoo County Circuit Judges by this County, presently standing at \$8,250.00, be reduced effective January 1, 1967, in some amount up to but not greater than \$5,000.00.

“Article VI, Section 18 of Michigan Constitution of 1963 requires salaries of Circuit Judges within a Circuit to be uniform, and also states that salaries may not be decreased during a term of office, except to the extent of a general salary reduction in all other branches of Government. The proposed reduction would be uniform, but would come during the term of office of one of our three Circuit Judges.”

Upon behalf of the board of supervisors you request my opinion upon the following question:

“‘May the Kalamazoo County Board of Supervisors decrease the County’s portion of the Circuit Judges’ salaries during their term of office, if the total salary received by the Circuit Judges from both County and State sources remains equal to or greater than its present level?’”

The 1908 Constitution provided:

“Each of the judges of the circuit courts shall receive a salary payable monthly. In addition to the salary paid from the state treasury, each circuit judge may receive from any county in which he

regularly holds court such additional salary as may be determined from time to time by the board of supervisors of the county. In any county where such additional salary is granted it shall be paid at the same rate to all circuit judges regularly holding court therein." Sec. 12, Art. VII.

"\* \* \* Salaries of public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment." Sec. 3, Art. XVI.

Any additional salary paid by a county pursuant to Section 12, Article VII, was required to be paid at the same level to all circuit judges regularly holding court in that circuit. *Lamb v. Board of Auditors of Wayne County*, 235 Mich. 95, 98-99 (1926); see also *Beach v. Kent*, 142 Mich. 347 (1905).

The prohibition of Section 3, Article XVI of the Michigan Constitution of 1908, against decrease of salary during one's term of office applied to all public officers having fixed terms and to all salary-fixing bodies. Thus, the board of supervisors was held to be without power to decrease the portion of the salary paid by the county to circuit judges during their term of office. *Gillespie v. Board of County Auditors of Oakland County*, 267 Mich. 483 (1934); *Rathbun v. Board of Supervisors of Lenawee County*, 275 Mich. 479 (1936). However, in neither of the instances involved in those cases was the attempt to decrease the county's portion of the judges' salary coincidental with an increase in an amount at least equal thereto in the state's portion of the salary. Research fails to reveal any opinion of an appellate Michigan court on this question.<sup>1</sup> The right of the board of supervisors to decrease or entirely terminate the payment of any additional salary effective with the commencement of a new term of a circuit judge was recognized not only by those cases but by the authorities generally. Thus, the board of supervisors in each county which was paying an additional salary to circuit judges could re-examine such issue every six years and either continue the current salary, increase, decrease, or entirely terminate payment of the same. Thus, meaning was given to the provisions of Section 12, Article VII, for the payment of "such additional salary as may be determined from time to time by the board of supervisors of the county."

Under the 1908 Constitution all circuit judges of the state were elected for regular terms of six years at the biennial spring election commencing in 1911. Sec. 9, Art. VII. The last election of circuit judges for the regular term was held in 1959. Only in case of vacancy was a circuit judge elected at an intervening election. Sec. 20, Art. VII. C.L. 1948 § 201.34.

The 1963 Constitution abolished the biennial spring election and required the election, except to fill vacancies, of circuit judges, as well as other state officers, at the general November election held in the even-numbered years. Sec. 5, Art. II. Under the 1963 Constitution circuit judges will in the future

<sup>1</sup> However, such issue was ruled upon in O.A.G. 1952-54, No. 1801, p. 381, in which the Attorney General upon authority of *Gillespie* and *Rathbun* held the board of supervisors to be without authority to decrease the additional salary paid by the county to a circuit judge during his current term, even though the state had increased the salary of the circuit judge.

be elected for a regular six-year term each. Sec. 12, Art. VI. However, that section further specified:

“\* \* \* In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.”

Section 8 of the Schedule and Temporary Provisions further mandated:

“The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office.”

Pursuant to such constitutional provisions and implementing legislation, circuit judges were elected in the several circuits of the state at the general November election of 1966 for terms of office commencing at 12 o'clock noon on January 1, 1967. Sec. 2, Art. XI. In circuits having three or more judges, the statute provides that circuit judges are to be elected for terms of six, eight, and ten years. Section 416b of Act 116, P.A. 1954, the Michigan election law, added by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1416(2). Their respective successors are to be elected for the regular six-year term.

The term of certain circuit judges who were elected either at the general November election in 1964 or at a special election held in the third judicial circuit on November 2, 1965, were extended by amendments to Section 416a of Act 116 by Act 393, P.A. 1965, and Act 38, P.A. 1966; M.S.A. Cur. Mat. § 6.1416(1), p. 120, and by Section 416(d) of said Act 393, P.A. 1965; M.S.A. Cur. Mat. § 6.1416(4), p. 12. The present term of those judges will expire on either January 1, 1971, or January 1, 1973. Included among the judges who were elected at the general November election in 1964 for a term of six years commencing on January 1, 1965, was an additional judge for the ninth (Kalamazoo County) circuit pursuant to Act 264, P.A. 1964; M.S.A. 1965 Cum. Supp. § 27A.510. Authority of the legislature to extend the term of circuit judges who had been elected subsequent to the effective date of the 1963 Constitution was upheld by an equally divided court. *Thorburn v. Oakland County Clerk*, 377 Mich. 293 (1966).

As to the salary payable to a circuit judge, the 1963 Constitution provides:

“Salaries of justices of the supreme court, of the judges of the court of appeals, of the circuit judges within a circuit, and of the probate judges within a county or district, shall be uniform, and may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government.

“Each of the judges of the circuit court shall receive an annual salary as provided by law. In addition to the salary received from the state, each circuit judge may receive from any county in which he regularly holds court an additional salary as determined from time to time by the board of supervisors of the county. In any county where an additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein.” Sec. 18, Art. VI.

It will be noted that the constitution requires that the salary payable to circuit judges within a circuit be uniform. Such requirement is undoubtedly applicable to the portion of the salary fixed by the state and the county.

Clearly, the 1908 Constitution barred county boards of supervisors from decreasing the additional salary of circuit judges during their term. *Gillespie v. Board of County Auditors of Oakland County*, supra; *Rathbun v. Board of Supervisors of Lenawee County*, supra. The 1963 Constitution in retaining a comparable prohibition against decreasing salaries of circuit judges during their term, except and only to the extent of a general salary reduction in all other branches of the county government must be deemed to have been adopted in the same sense as it had been judicially interpreted. *Knapp v. Palmer*, 324 Mich. 694 (1949).

Reference may be had not only to the address to the people, but also to the debates and other records of the convention which drafted the constitution as bearing on the intent expressed thereby:

"It is a fundamental principle of constitutional construction that we determine the intent of the framers of the Constitution and of the people adopting it." *Holland v. Clerk of Garden City*, 299 Mich. 465, 470 (1941), quoted with approval in *Burdick v. Secretary of State*, 373 Mich. 578, 584 (1964).

Section 18 originated in the constitutional convention as Committee Proposal 96g. That proposal as introduced by the committee on judicial branch, Mr. Danhof chairman, read:

"SALARIES OF JUSTICES OF THE SUPREME COURT, OF THE JUDGES OF THE COURT OF APPEALS, OF THE CIRCUIT JUDGES WITHIN THE COUNTY OR CIRCUIT, AND OF THE PROBATE JUDGES WITHIN A COUNTY OR DISTRICT, SHALL BE UNIFORM, AND MAY BE INCREASED BUT SHALL NOT BE DECREASED, DURING A TERM OF OFFICE EXCEPT AND ONLY TO THE EXTENT OF A GENERAL SALARY REDUCTION IN ALL OTHER BRANCHES OF GOVERNMENT.

"EACH OF THE JUDGES OF THE CIRCUIT COURTS SHALL RECEIVE A SALARY PAYABLE MONTHLY. IN ADDITION TO THE SALARY PAID FROM THE STATE TREASURY, EACH CIRCUIT JUDGE MAY RECEIVE FROM ANY COUNTY IN WHICH HE REGULARLY HOLDS COURT SUCH ADDITIONAL SALARY AS MAY BE DETERMINED FROM TIME TO TIME BY THE BOARD OF SUPERVISORS OF THE COUNTY. IN ANY COUNTY WHERE SUCH ADDITIONAL SALARY IS GRANTED, IT SHALL BE PAID AT THE SAME RATE TO ALL CIRCUIT JUDGES REGULARLY HOLDING COURT THEREIN." *Official Record*, Vol. 1, 1961 Constitutional Convention, pp. 1478, 1479.

The statement of reasons submitted by the majority of the committee in support of such proposal read:

"The provisions of this section are designed to assure uniform salaries for all judges within a certain district. It likewise removes the restric-

tion of section 3 of article XVI which, as it now stands, prohibits the increase of salary of any supreme court justice during his term of office. We now have justices whose salaries vary as much as \$7,000.00 per year. The committee believes that this discrimination should be abolished. However, due to the requirement of staggered terms for circuit judges and probate judges it became evident that some other method should be devised if a salary reduction ever became necessary. Accordingly, the proposition was adopted that a salary reduction could be obtained for the judiciary only if general salary reduction were made in each of the other branches of the government. This would eliminate the danger of the judiciary being singled out for salary reduction." Ibid, p. 1480.

Thus, as pointed out in the statement of reasons submitted by the majority, the effect of the requirement that the terms of judges in multi-judge circuits be staggered coupled with the further requirement that their salaries be uniform would be to terminate the previous right of the salary-fixing bodies to reduce as well as to increase the salaries of the judges every six years. In lieu thereof:

"\* \* \* the proposition was adopted that a salary reduction could be obtained for the judiciary only if general salary reduction were made in each of the other branches of the government.\* \* \*"

Notwithstanding a single inconsistent expression of opinion made on the floor during debate thereof<sup>2</sup> such statement of reasons submitted by the majority of the committee on judiciary branch is strongly indicative that the members of the constitutional convention which drafted the constitution were aware of the effect of such requirements.

Section 18 of Article VI does not differentiate between the salary paid by the county and that paid by the state in specifying that:

"Salaries \* \* \* of the circuit judges within a circuit, \* \* \* shall be uniform, and may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government."

The effect of the several constitutional provisions is that in multi-judge circuits the county board of supervisors may not terminate or reduce the additional salary heretofore fixed by them except and only to the extent of a general salary reduction in all the branches of the county government. Presumably the framers and the people in ratifying the constitution were not unmindful of the necessary result thereof.

I am, therefore, of the opinion that such limitation is applicable to the board of supervisors as well as to the legislature and as stated thereby, restricts the board from decreasing the salary payable to a circuit judge during his term. The necessary effect of such restriction together with the requirement that the salary of judges of the circuit be uniform is to prohibit the decrease in the salary payable by the county during the term of office

<sup>2</sup> *Official Record*, Vol. 1, 1961 Constitutional Convention, p. 1532.

of one or more incumbent judges of that circuit except and only to the extent of a general salary reduction in all other branches of county government. The question presented must therefore be answered in the negative.

FRANK J. KELLEY,  
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