



OFFICE OF THE COUNTY COUNSELOR

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To: Frank White, Jr., County Executive

From: Bryan Covinsky, County Counselor

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RE: Retroactive County Hazard Pay

The Office of the County Counselor has been asked for a legal opinion as to whether the County is permitted to pay certain Jackson County employees retroactive hazard pay related to the COVID-19 crisis. After review of relevant case and state constitutional law, the Office of the County Counselor offers the following opinion on this matter.

The Missouri Constitution, in Article III, § 39, Subsection 3, states that “[t]he general assembly shall not have power ... [t]o grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor *after* service has been rendered or a contract has been entered into and performed in whole or in part[.]” (emphasis added).

Missouri courts have interpreted this article of the state constitution to mean that extra compensation, given after services have been rendered, is prohibited. *See State ex rel. Cleaveland v. Bond*, 518 S.W.2d 649 (1975) (retirement benefits conferred upon judges retired from the service prior to the enactment of the Retirement Act of 1971 would constitute extra compensation after services were rendered); *Jackson v. Wilson*, 581 S.W.2d 39 (Mo. Ct. App. 1979) (retroactive application of the tort defense fund is extra compensation after service has been rendered); and *Vangilder v. City of Jackson*, 492 S.W.2d 15 (Mo. Ct. App. 1973) (Article III, § 39, Subsection 3 pertains to extra compensation given after service has been performed, not to compensation earned during service but taken after the period of service).

The law on this particular issue is longstanding, as evidenced by the *Cleaveland*, *Jackson*, and *Vangilder* cases standing the test of time under Missouri law, but also by two Missouri Attorney General’s Office Opinions released in 1955 and 1987. In 1955, Missouri Attorney General John M. Dalton handed down an opinion on this issue stating that “...a government agency which derives its power and authority from the Constitution and laws of this state would be prohibited from granting extra compensation in the form of bonuses to public officers or servants after the service has been rendered.” (Missouri Attorney General Opinion No. 72, June 14, 1955). Further, in 1987, Missouri Attorney General William L. Webster cited the above-mentioned case law in noting that additional payments which were rendered to workers for services performed, but

were part of their compensation for those services (as opposed to bonuses on top of their already-earned pay) were permissible. (Missouri Attorney General Opinion No. 114, July 31, 1987).

Here, the question at issue deals with whether certain Jackson County employees may receive hazard pay, on top of their regular pay, for working during particular periods of the COVID-19 crisis. Based on the above-cited state constitutional provision, as well as case law interpreting that provision, it is the opinion of the Office of the County Counselor that such hazard pay would constitute extra compensation after services have been performed, and is impermissible under Missouri law. Thus, we must advise against any payment to Jackson County employees which would be additional pay rendered for duties already performed and for which these employees already were compensated.