DATE: OCTOBER 29, 2024
MEMO TO: BRIAN HEAD, CITY ATTORNEY
FROM: JUDGE VENESSA MAXWELL-LOPEZ
CC: MARK DUNNING, CITY MANAGER; CHRISTAL WEBER, ASSISTANT CITY MANAGER; PRESIDING JUDGE DANA ALTIERI

RE: RESPONSE TO 10.25.24 MEMO REGARDING COMPENSATION

Thank you for taking the time to respond to the City Manager's request to seek solutions to fund an additional two court days per week which would include additional resources being allocated to the court and judges.

However, I am very disappointed that no real solution was offered. After reviewing your memo, I did some preliminary research and disagree with your analysis that there is no way to give the Judges additional compensation for taking on the additional duties of a four day a week court schedule.

Your memo discusses Laclede County v. Douglass, 43 S.W.3d 826, 828 (Mo. Banc 2001) where the Missouri Supreme Court said that "Despite its plain language, the Constitutional prohibition against midterm increases in compensation is not absolute."

I found it to be well established caselaw that when new duties are imposed upon a public officer, he may receive additional compensation for the performance of such duties without violating a constitutional prohibition against an increase of salary during the term of office. See Land v. Lewis, 299 Ky.866, 186 S.W.2d 803 (1945); State ex rel. Tomka v. Janing, 183 Neb 76, 158 N.W.2d 213 (1968); State ex rel. Goodwin v. Rogers, 217 S.E. 2d 65 (W. Va. 1975); Hawkins v. City of Fayette, 604 S.W.2d 716 (Mo.App. 1980); Annot, 159 A.L.R.606; Annot, 170 A.L.R. 1438; Mooney v. County of St. Louis, 286 S.W.2d 763, 766 (Mo. 1956).

The Missouri Supreme Court has recognized exceptions to the prohibition to midterm increases in compensation. Mooney v. County of St. Louis states: "There can be no doubt but that the legislature may award extra compensation to an incumbent for the performance of certain newly imposed duties without violating the constitutional inhibition under consideration. State ex rel. McGrath v. Walker, 97 Mo. 162, 10 S.W. 473; State ex rel. Harvey v. Sheehan, 269 Mo. 421, 190 S.W. 864; Denneny v. Silvey, 302 Mo. 665, 259 S.W. 422; Little River Drainage Dist. v. Lassater, 325 Mo. 493, 29 S.W.2d 716."

I disagree with your statement that this exception would not apply here. Adding an additional court date to each division is just the type of exception recognized by the Supreme Court in Mooney as it would be imposing new and additional duties on both Judges. The responsibility of being at court for an additional day each week and handling additional dockets is absolutely an additional duty being imposed for each Judge. Adding the necessity of supervising the court administrator, which we are now required to do is absolutely taking on additional duties.

Presiding over additional dockets on additional days is absolutely taking on additional duties. Adding a drug and mental health court docket, which the police department is seeking a grant to do, is absolutely taking on additional duties. All of this requires additional time at the court to do so.

In Hawkins v. City of Fayette, 604 S.W.2d 716 (Mo.App., W.D. 1980), the Missouri Court of Appeals upheld a city ordinance increasing the compensation of the mayor on the basis of additional duties named in the ordinance. In that case, these additional duties were imposed upon the mayor after taking office. This is the same situation we are facing in LS. By increasing court dockets to four days per week, the City would be imposing additional duties on both Judges. To compensate for these additional and newly imposed duties, we are seeking to have the LS City Council pass an ordinance increasing the compensation of the Judges due to the new duties required by the additional court days. This would not violate the prohibition of increasing compensation as confirmed in multiple Missouri Supreme Court and Court of Appeals decisions.

In discussing increasing compensation during a term, the court in State ex rel. George v. Verkamp, 365 S.W.3d 598, 601 (Mo. 2012), explains that the purpose of Missouri Constitution Article VII, section 13 is "to prevent persons while possessed of the prestige and influence of official power from using that power for their own advantage...." *State ex rel. Scobee v. Meriwether,* 355 Mo. 1217, 200 S.W.2d 340, 341 (1947)." In our situation, the purpose of seeking the additional compensation is due to increasing the duties caused by adding two additional dockets. This is the result of the urgent need for LS to catch up to the growth in population of the city which it has neglected to do for 40 years. This is not Judge Altieri and I seeking additional compensation in the form of a pay raise with our current roles and duties.

You cited the LS ordinance regarding compensation and stated that we cannot ask for "a pay increase" based on the number of cases we are handling. We are not doing that. Certainly, adding an additional two days of court is a change in the duties and responsibilities we have, and asking for additional compensation is due to the increased court days we will have to be present for, not due to the number of cases we will see on those two additional days. The ordinance dealing with compensation does not mention or even anticipate a difference in compensation due to an increased number of court days and thus, does not specifically prohibit it. Rather, it states that it is not dependent on the number of cases tried, the number of guilty verdicts reached or amount of fines imposed or collected. City of Lee's Summit, MO, City Charter, §7.2(i), 2017. Clearly, that is not the case here as the additional compensation sought is not based on trials, guilty verdicts or fines imposed or collected.

The question you presented and sought to answer in your memo stated that we were requesting a pay increase. As I stated in previous correspondence, we are not asking for a pay increase, and you should not look at this specifically as a pay increase. LS is experiencing serious problems with the function and effectiveness of the court system. Until recently, we were not even operating according to the minimum operating standards as promulgated by the Missouri Supreme Court. This is bigger than your assertions that we are requesting a pay increase due to

frequently working past 5:00. The municipal court is not functioning on an efficient level. While you might not be aware of the magnitude of the problem, everyone involved with the court process does, including the police department and the City Manager's office and believes that the solution is to add two additional court days per week. I forwarded you an email this afternoon detailing how Judge Altieri was so behind due to her volume and scheduled trials that when I was there for a meeting, I was asked to put on a robe, and I began seeing people in the hallway outside the courtroom to alleviate some of the backlog. This is a problem we can fix with additional court dates.

The city has exploded in population in the last 40 years. The court system has not kept up with the increase in the population of LS or the surrounding communities or with the increased number of tickets being written. LS is now the sixth largest city in Missouri, and according to the city website, LS is now at 106,031 people. However, we are still operating with the same two day a week schedule we had 40 years ago when there were only 70 officers writing tickets, and when the population was only 38,000. With over 170 current LS police officers, and with the surrounding areas also exploding in growth, our two day a week dockets are no longer practical, sustainable or feasible. I provided research to Mark Dunning about the number of dockets other cities of a similar size have per week and how even considerably smaller populations have more court dates than LS does. The police department agrees that additional court days are necessary, and I provided Mark Dunning with correspondence from Deputy Chief John Boenker outlining the need for additional court days. The court system needs to catch up to the growth of the city and add additional court days to accommodate the explosion in population over the last 40 years. This can only be accomplished by adding additional court days. Everyone is in agreement, and Christal Weber indicated that the City Manager had agreed with the need to increase the amount of court days, and we have been working with the police department, prosecutors and city staff to do so. She asked you for a legal analysis on how that could be done to compensate us for the additional duties.

As head of the legal department of the city and knowing both the City Manager and police department are behind adding two additional court days, we are asking you to begin this process to seek this additional compensation for the additional duties in the form on an ordinance. If you are not willing to do so, we are requesting a meeting with the City Finance and Budget Committee and ultimately, the entire City Council to provide this information to them and to seek an ordinance change which would allow us to move forward with the four day a week schedule we have all been working on but put on hold until the compensation issue is resolved.