

require that a salary commission meet in November or December of odd numbered years to set the salaries for those offices for which candidates will be filing in the upcoming February filling period. This process insures that the salary for public offices is set without regard as to which candidates will prevail in the next election. The salaries set by the salary commission at their November or December meeting then take effect some thirteen or so months later after the elections have taken place and new terms of office have begun.

Seemingly without legal compass, the Cole County Salary Commission met on November 28, 2005, to consider salaries for those offices whose next terms of office would next begin either in 2007 or 2009. No notice of the meeting was published in the local newspaper as required by section 50.333.2 and no financial report of the result of that meeting was certified to the Cole County Clerk's Office as required by section 50.333.8. Those legal problems, however, are overshadowed by the legal shortcomings of the two motions taken up and passed in that Salary Commission meeting. Neither of the two motions was in proper legal form or authorized by statute.

Salary Commissions are generally not given the authority to set individualized salaries; rather the base salary for the various offices is either set by statute or sometimes set by special one-time meeting authorized by statute for the purpose of providing an opportunity to equalize salaries. Absent being one of

these one-time meetings authorized by statute, which the 2005 meeting was not, section 50.333 only allows a Salary Commission to increase or decrease salaries by a uniform percentage applied to the existing salaries. Section 50.333.8 provides as follows:

The report of compensation ... shall be in substantially the following form: The salary commission reports that there shall be (no increase in compensation) (an increase of ____percent) (a decrease of ____percent)...

If there is to be a decrease in compensation, the statute further requires that such a motion pass by two-thirds of those voting.

The 2005 Salary Commission meeting first passed, by a vote of 7-5, a motion “To reconsider the previous motion of the 2004 Salary Commission that awarded pay increases to the elected officials of the county”. That motion is void for three reason: First, there was no statutory authority to meet for the purpose of reconsidering a Salary Commission’s decision from an earlier year; second, the motion was not in one of the three forms proscribed by subsection 8; and third, since the effect of the motion was to reduce salaries which had been set by an earlier salary commission, it failed to receive the required two-thirds vote. The second motion passed by the 2005 Salary Commission, in an identical 7-5 vote, was a motion:

“To adopt the Salary Commission as the base salary of all elected officials the salary of the offices as of August 28, 2005 by setting the following base compensation for the offices of:

Auditor:	\$51,230.70
Recorder:	\$51,230.70
Collector:	\$54,244.52
Clerk:	\$51,230.70
Assessor:	\$54,072.72
Public Administrator:	\$54,072.72
Treasurer:	\$42,056.56
Presiding Commissioner:	\$39,816.10
Eastern District Commissioner:	\$37,539.48
Western District Commissioner:	\$37,539.48

To be effective as of January 1, 2007 for the officeholders who are next able to accept the compensation specified in this motion after the motion is adopted”.

This motion was void because it was not in the form proscribed by subsection 8 of section 50.333. To the extent that this motion resulted in a decrease of the salaries for certain offices, it was also void for failing to garner the required two-thirds vote. Thus both motions passed at the 2005 Salary Commission meeting are null and void.

Next for consideration is the Salary Commission meeting of December 14, 2004. Notice of that meeting was properly published in the local newspaper as required by section 50.333.2. However, unlike the regular biannual meetings of a Salary Commission which occur in odd numbered years, this was a special meeting authorized by section 50.339 to allow the Cole County Salary Commission to meet in 2004 for the purpose of equalizing the salaries of all county offices. That

section, passed as part of Senate Bill 547 during the 2003 legislative session, provided as follows:³

Section 50.339 Cole County Salary Commission Authorized To Equalize Salaries On A One-Time Basis.—1. In any county of the first classification with more than seventy-one thousand three hundred but less than seventy-one thousand four hundred inhabitants, the salary commission at its meeting in 2003 and at any meeting held in 2004 may equalize the base salary for each office to an amount not greater than that set by law as the maximum compensation. Nothing in this section shall be construed to prevent offices which have additional compensation specified in law from receiving such compensation or from having such compensation added to the base compensation in excess of the equalized salary.

At the Salary Commission meeting on December 14, 2004, a motion was made to adopt the uniform salary schedule set forth in section 50.343, with an effective date of January 1, 2007. The motion passed unanimously with nine votes. Said decision was certified to the county clerk by the Chairman of the Cole County Salary Commission in its report of compensation as required by Section 50.333.8. While the actions of the 2004 Salary Commission were conducted in accordance with the statutes governing Salary Commission meetings, the sole authority for the special meeting is section 50.339. Thus the validity of the Salary Commission vote will depend on the constitutionality of section 50.339.

³ During the 2006 legislative session, a subsection 2 was added to allow the Cape Girardeau Salary Commission to equalize their county salaries. That subsection would appear to have similar constitutional infirmities.

Article III, section 40 (30) of the Missouri Constitution provides “The general assembly shall not pass any local or special law where a general law can be made applicable...” Special legislation has been defined as “statutes that apply to localities rather than to the state as a whole and statutes that benefit individuals rather than the general public”, *Jefferson County Fire Protection Districts Association v. Blunt*, 205 S.W.3d 866, at 868 (Mo. Banc 2006). A law is considered facially special if it is based on closed characteristics such as geography or historical facts; however, a law based on open ended characteristics such as population is not considered facially special. The rationale for considering population as an open ended characteristic is that other entities may eventually fall into that classification. That rationale fails, however, where the classification is so narrow or drawn in such a manner that as a practical matter other localities or entities could not fall into that classification. In this instance, the population classification in section of 50.339 (now subsection 1) is between seventy-one thousand three hundred and seventy-one thousand four hundred, and that narrow classification is further limited because that population range must occur in 2003 or 2004 when the Salary Commission must meet. Furthermore, lest anyone mistakenly assume that this law might apply to their county, the title of the section boldly proclaims, “Section 50.339 Cole County Salary Commission Authorized To Equalize Salaries On A One-Time Basis.”

Section 50.339 clearly targets Cole County when other counties of similar size were excluded. While plaintiffs have argued that the population classification makes the law open ended, this Court finds otherwise, and plaintiffs have failed to offer any justification for a special law. The General Assembly has passed a special law where a general law could be made applicable. Although the actions of the 2004 Salary Commission conformed to the legal requirements, the statute from which the authority stems is special legislation, and thus unconstitutional.

IT IS HEREBY ORDERED AND DECLARED that all votes and actions taken at the 2005 Salary Commission meeting are void for the reasons stated, and that the vote and action taken at the 2004 Salary Commission is void because Section 50.539.1 is a special law. Therefore salaries of the affected Cole County officials, as made parties to this action, shall be determined by the last Salary Commission certifications for their offices made in the immediately preceding Salary Commission Meetings.

IT IS SO ORDERED THIS 4TH DAY OF OCTOBER, 2007.

Richard G. Callahan
Circuit Court Judge, Division II