

COUNTY TREASURERS: Compensation can not be increased during term.

April 11, 1941

Honorable William R. Collinson
Prosecuting Attorney
Greene County
Springfield, Missouri



Attention - V. O. Coltrane, Jr.
Assistant Prosecuting Attorney

Dear Sir:

Under date of March 27, 1941, you wrote this office requesting an opinion as follows:

"Under date of February 12, 1941, I requested an opinion from your office on certain questions set out therein. I have received no reply to this letter, and am wondering whether or not this was ever taken up by your office.

"The most pressing question presented at the time was the question as to the authority of the County Court to pay the salary of a deputy in the Treasurer's office. I expressed the opinion that the Treasurer was not entitled to a deputy since there was no provision for one given by statute, Greene County no longer being in the class of counties having a population of 75,000 to 90,000 inhabitants; that there being no provision for a deputy in counties of the class of Greene County, the Treasurer must pay the deputy out of his own salary.

"Shortly after January 1st, 1941, the Greene County Court, by its order entered of record, fixed the salary of the County Treasurer at \$3,200.00, being the same salary the Treasurer drew under the provisions of Sec. 13498 R. S.

1939. The said Court further fixed the salary of a deputy at \$1,800.00 per year.

"Assuming that it is your opinion that the County Court cannot legally pay the salary of a deputy to the Treasurer, the further question arises as to whether or not the County Court can increase the salary of the Treasurer so that the Treasurer may pay the deputy out of his own salary. In other words, would it be proper to increase the Treasurer's salary to \$5,000.00 a year so that he could pay the deputy \$1,800.00 a year out of his own compensation?

"Sec. 13800 R. S. 1939, provides that 'Unless otherwise provided by law, the County Court shall allow the treasurer for his services under this article such compensation as may be deemed just and reasonable, and cause warrants to be drawn therefor.'

"Sec. 10400 R. S. 1939, provides that 'the County Treasurer shall be allowed such compensation for his services as the County Court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him to be paid out of the County Treasury.' This compensation is for the Treasurer's duties as custodian of school moneys.

"If the compensation of the Treasurer can be raised, the Court could make an order giving the Treasurer \$1,800.00 per year for disbursing the school funds in addition to his present salary of \$3,200.00 per year. In this county \$1,800.00 per year would not be more than one-half of one per cent of the school moneys disbursed by him. The Treasurer could then pay the deputy's salary out of his own compensation.

"The only objection to this procedure, as I see it, is Sec. 8, Article 14, of the Constitution which prohibits the increase of the com-

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pensation or fees of a State, County or Municipal officer during his term of office. Under Sec. 13800 R. S. 1939, the annotation states that 'Treasurer is not a constitutional officer, and his salary may be increased or decreased at any time.' The case of Givens vs. County, 107 Mo. 603, 17 S. W. 998, which is cited does not seem to hold that, however, in my opinion.

"However, since Sec. 10400 R. S. 1939 and Sec. 13800 R. S. 1939, leave the compensation of the Treasurer up to the discretion of the County Court, it seems as though the Court would have the power to increase or decrease his compensation at any time; that it would be unreasonable to say that once the Court fixed his compensation it could not increase it at any time during his term, especially if it had been inadequate prior to the time of the increase; that Sec. 8, Article 14 of the Constitution should not apply since the compensation of the Treasurer is not fixed but is left to the Court's discretion.

"It is my understanding that the Treasurer here has always had a deputy. Also, I have been informed and believe, that a deputy is necessary to assist the Treasurer in the performance of his duties. Consequently, it is desirable that a way should be determined for employment of one if it is at all legally possible to do so. This, assuming that the County Court cannot directly pay the salary of a deputy to the Treasurer.

"While I understand legislation is now pending before the State Legislature in regard to the Treasurers' Offices in the various Counties, the Greene County Court would appreciate your opinion on these matters."

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While the object sought to be achieved is to provide some method of compensating a needed deputy in the office of the Treasurer of Greene County, the substance of your inquiry is Can the compensation of the county treasurer be increased during his term of office?

As noted in your letter, the compensation of a treasurer is provided by two sections of the statutes. Section 10400, R. S. 1939, provides that the county court may fix the compensation of the treasurer for disbursing school moneys at not to exceed one-half of one per cent of moneys disbursed by him, and Section 13800, R. S. 1939, which provides that the county court shall allow the treasurer such compensation as may be deemed just and reasonable.

In the case of Sanderson v. Pike County, 195 Mo. 598, similar sections of the statutes found in the Revised Statutes of 1899 were discussed and the Supreme Court ruled that before any compensation could be drawn by the treasurer under either section, the county court must fix it in some manner.

In Volume II of the Statutes, following Section 13800, among others, is the following annotation: "Treasurer is not a constitutional officer, and his salary may be increased or decreased at any time. Givens v. County, 107 Mo. 603, 17 S. W. 998." In your letter you state that you do not believe the holding in this case is to that effect. Neither does the writer believe it is, although in the case of Dietrich v. Brickey, 277 S. W. 615, at l. c. 616, is the following:

"Our Supreme Court has decided that the compensation of the county treasurer could be increased, changed, or diminished during the incumbency of that office. See Givens v. Davless County, 107 Mo. 603, 17 S. W. 998. * * * * *"

In this case there is a general statement of the law on page 609 to the effect that absent constitutional restrictions, changes may be made in salaries:

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"* * * In the absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his duties enlarged without the impairment of any vested right. State ex rel. v. Smith, 87 Mo. 158; City of Hoboken v. Gear, 27 N. J. L. 278; United States v. Fisher, 109 U. S. 143."

However, we have a constitutional restriction on increasing salaries during a term of office. This is Section 8 of Article 14 of the Constitution mentioned in your letter, which is as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

This section, you will note, does not limit this prohibition to the salaries of the constitutional officers.

In the case of State ex rel. Stevenson v. Smith, 87 Mo. 158, at l. c. 160, this section was held to apply to the compensation of the assessor and collector of water rates of the City of St. Louis. In the case of Callaway Co. v. Henderson, 119 Mo. 32, at l. c. 40, the court, in holding this section to apply to the compensation of a county clerk, said:

"3. The acts of the twenty-first of March, 1883, of the thirtieth of March, 1887, and of the twelfth of April, 1889, all limit the amount of fees which a clerk may retain for one year to the sum of \$1,500, and the amount which he may pay out

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for deputies and assistants to \$1,250, in counties of the population before mentioned. Under Section 8, of article 14, of the constitution, the compensation of the clerk cannot be increased during his official term. The amounts, therefore, which he may retain for 1890 are \$1,500 for himself and \$1,250 for deputy hire."

In the case of *Givens v. Daviess County*, supra, at 1. c. 610, the court said:

"We do not think the order had the effect of accomplishing a change in the salary for services subsequent to its date for the reason that the terms used, 'in full of all demands as such treasurer,' does not express such an intention. Those terms imply rather that this payment was in full of salary to that date, but as such a construction would increase the salary, which could not be done under the constitution, (art. 14, sec. 8,) we must infer that it was only intended to cover the salary for two years, leaving the additional period for future adjustment."

CONCLUSION

It is the conclusion of this department that to increase the compensation of the county treasurer of Greene County during his term of office would be a direct violation of Section 8 of article 14 of the constitution.

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WOJ/rv

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General