

COUNTY TREASURER:

DEPUTIES:

ASSISTANTS:

COUNTY COURT:

SECOND CLASS COUNTIES:

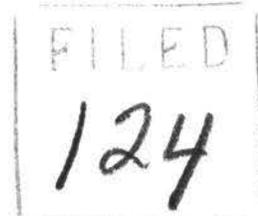
A county treasurer of a second class county must submit his deputy and assistant appointments to the county court pursuant to Section 54.230, RSMo 1959.

See: State ex rel. Lack v. Melton, 629 S.W.2d 302 (Mo. banc 1985).

OPINION NO. 124(1967)

May 2, 1967

Honorable Lawrence O. Davis
Prosecuting Attorney
Franklin County
County Court House
Union, Missouri



Dear Mr. Davis:

Recently your predecessor requested an opinion from this office concerning the interpretation of Section 54.230, RSMo 1959. The letter, in part, stated:

"The County Treasurer of Franklin County has requested a Deputy Treasurer for his office as he feels the same is necessary for the prompt and proper discharge of his office. He has been informed by the County Court that it is the opinion of the Court that an Assistant or Deputy is not necessary.

"The question that we would like answered at this time is whether or not, if it is determined by the County Treasurer that he does need a Deputy, if the County Court has the authority to refuse the same."

The prime rule of statutory interpretation is well stated in Turner vs. Kansas City, Mo., 191 S.W.2d 612 (1.c. 617):

" . . . The ascertainment of the intention of the lawmaker is the primary and fundamental factor in the construction of statutes . . . "

In order to determine the legislative intent of a statute, the language used should usually be given its plain and ordinary meaning. Baker vs. Brown's Estate, Mo., 294 S.W.2d 22.

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Keeping in mind these guide lines, we examine the language of Section 54.230, supra, pertaining to second class counties:

"The county treasurer, of a county of the second class, shall be entitled to have and to appoint such a number of deputies and assistants as the county treasurer, with the approval of the county court, may deem necessary for the prompt and proper discharge of his office, and they shall be paid such salaries as may be fixed by the county treasurer with the approval of the county court. The salaries of all such deputies and assistants shall be paid by the county in the same manner as the salary of the county treasurer is paid."
(Emphasis added.)

The emphasized language above presents the question for construction and could be interpreted in two ways:

1. That the county treasurer has an unqualified right to appoint deputies and assistants and the county court's approval is simply ministerial.
2. That the county treasurer's right to appoint deputies and assistants is a qualified right which requires the approval of the county court in the exercise of its discretion.

The question to be decided then is whether or not, pursuant to Section 54.230, supra, the county court's function is ministerial or discretionary.

A search of the cases reveals that this question has not been presented to the courts concerning Section 54.230, supra, or its predecessor, Section 13800, R.S. 1939, which was amended in 1945 to its present form. Laws, 1945, p. 1561, Section 2. However, the Supreme Court of Missouri has ruled on a very similar question involving the appointment of deputy county clerks in Whalen vs. Buchanan County, Mo., 111 S.W.2d 177.

The court in the Whalen case, supra, was faced with the construction of Section 11857, R.S. 1929, (13489, R.S. 1939) which

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in part reads as follows:

"The collector of revenue, clerk of the circuit court, assessor, recorder of deeds, county treasurer, and any other county officer, shall each be entitled to such a number of deputies and assistants, to be appointed by said county officer, as the county court may deem necessary for the prompt and proper discharge of the duties of their various offices,
. . . ." (Emphasis added.)

The Court stated (l.c. 180):

" . . . In the first place, section 11856, supra, gives the county clerk the right to appoint a chief deputy and fixes the salary. It says nothing about classification. Section 11857 does provide for classification and fixes salaries for each class. It seems to imply, also, that the county court may exercise discretion as to the number of deputies and assistants the clerk may appoint. But, if we are to give full effect to both sections, section 11857 cannot be held to authorize 'classification,' as therein provided, of a 'chief deputy,' provided for by section 11856, as a 'Class A' deputy under section 11857, because section 11856 authorizes the clerk to appoint a 'chief deputy' at a salary of \$1,920 per year, leaving, if construed by itself, nothing for the county court to do but pay the salary fixed by the statute, while section 11857 fixes the salary of 'Class A' deputies at \$1,680 per year and lower salaries for deputies or assistants in classes B and C therein provided for. If section 11857 (assuming that it applies to county clerks) be construed to mean all deputies, including the 'chief deputy' provided for in section 11856, there would be repugnancy between the two sections. By construing section 11857 (as applied to county clerks) as referring to deputies and assistants other than the 'chief deputy' specifically provided for by section 11856, such repugnancy is avoided. We so construe it." (Emphasis added.)

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This long quote from the Whalen case is necessary to demonstrate when the county court could exercise its discretion in approving deputies for county officers and where it could not. According to Section 11856, R.S. 1929, a county clerk could as a matter of right appoint a "chief deputy" and set his salary. The appointment of other deputies and assistants must be subject to the discretion of the county court. The office of the county treasurer was also controlled by Section 11857, R.S. 1929, and the holding in Whalen vs. Buchanan County, supra, would have undoubtedly been applicable law.

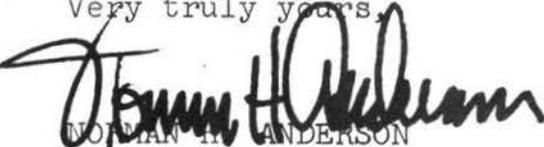
The present law, Section 54.230, does not provide for a "chief deputy" and therefore the approval of all deputies and assistants to the office of county treasurer now falls within the discretion of the county court and the treasurer is not entitled to have such as a matter of right.

CONCLUSION

It is therefore the opinion of this office that a county treasurer of a second class county must submit his deputy and assistant appointments to the county court pursuant to Section 54.230, RSMo 1959. Such appointment is not valid until approved by the county court and that approval is within the sound discretion of the county court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William A. Peterson.

Very truly yours,


NORMAN H. ANDERSON
Attorney General