

COUNTY TREASURER: Salary within discretion of county court.

July 30, 1933



Hon. W. Irvin Jackson  
Prosecuting Attorney  
Wright County  
Hartville, Missouri

12138 R5 Mo 19 29

Dear Sir:

This department is in receipt of your letter of July 23, 1933, in which you make the following request for an opinion:

"In view of the recent legislation with reference to taxes and their collection, it seems to me that our county court is paying to our collector a salary wholly inadequate.

I am of the opinion that he should be paid a salary of \$100.00 to \$125.00 per month and am sure that the county court would make such an order if should see fit to so advise."

The treasurer of Wright county, Wright county having adopted township organization, is also ex officio collector as provided by Section 13312 R. S. No. 1929.

Section 13316 Laws No. 1933, provides as follows:

"The county treasurer in counties adopting township organization shall be allowed a salary by the county court as at present provided by law. the county collector for collecting and paying over the same shall be allowed a

commission of two per cent on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and two per cent on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes: Provided, he shall receive nothing for paying over money to his successor in office."

It will be noticed that the salary of the treasurer in counties adopting township organization shall be fixed by the county court as at present provided by law. This provision of the statute is referable to Section 12138 R. S. No. 1929, which provides as follows:

"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."

In the case of Sanderson v. Pike County, 195 Mo. 598, the Court said:

"\* \* \*It will thus be seen that the Legislature has vested in the county court the power to fix the compensation of the treasurer for his general services and for his services in disbursing the school moneys of the county. With this discretion neither this court nor the circuit court has any right to interfere. The county court is a court of record, and its acts and proceedings can only be known by its record.\* \* \*"

In the case of State ex rel. Dietrich v. Baues et al, (Supreme Court No.) 287 S. W. 430, the Court said:

"\* \* \*It requires no citation of authority to show that the power to prescribe a salary as an incident to a public office

is purely legislative in character. That power, as respects the office of county treasurer, the Legislature has delegated to the county court the agency most familiar with the fiscal affairs and financial condition of the county, as well as the services required to be performed by the treasurer--which may vary in different counties and at different times in the same county. The only limitation upon the power is that the compensation allowed thereunder be such as may be deemed just and reasonable. What is just and reasonable in a given case is committed to the discretion of the county court and to it only. Its action in the exercise of that discretion is not subject to judicial review, for the simple reason that neither the statute which confers the discretion nor any other makes it so. \* \* \*

Therefore, it is the opinion of this department that the question as to whether or not the compensation of the treasurer allowed by the county court may be deemed just and reasonable as provided by Section 12138 R. S. No. 1929 is a question committed to the discretion of the county court and to it only.

Yours very truly,

JOHN W. HOFFMAN, JR.,  
Assistant Attorney General.

APPROVED:

---

ROY McKITTRICK,  
Attorney General.

JWH:MM