

COUNTY COURTS: May reduce compensation of County Treasurer during term of office.

12-11  
December 6, 1933



Hon. Wm. Short  
County Treasurer  
Court House  
Huntsville, Missouri

My Dear Mr. Short:

Acknowledgment is made of your request for an opinion of this office, your letter reading as follows:

\* \* \* \* This office was paying \$300.00 a month when I announced for it and was nominated on the 2nd of Aug. 1932 and was elected of course in November 1932. There had been nothing said in regards to the salary of this or any other office in the County up to and including the present time.

On Dec. 27th, 1932, 4 days before I took the office of County Treasurer of this county, the fourth Monday in Dec. 1932, and took charge on January 1st, 1933, it came out in the Moberly paper that the County Court had cut the salary of the County Treasurer and the county Surveyor \$50.00 a month each. I did not know the law but I never did think that there was a law like that for them after all three of them serving eight years in the County Court to wait until I was elected to cut the pay. If there was a law so I could call an election on this cut the people would vote to leave it like it was as they had a right to cut it before anyone was elected. If the law give them the right to cut it all but not four days before a new man took charge after a man had the office for twelve years and was running again but was defeated and that is one reason the County Court decided to cut the pay.

Now Roy if this is not asking to much of you I would like to have your opinion on my case with the County Court.\* \* \*

I.

COUNTY TREASURER'S COMPENSATION  
BASED UPON SECTION 12138 R. S. Mo.  
1929.

The statutory provision providing for the compensation of the County Treasurer is found in Section 12138 R. S. Mo. 1929 which reads 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."

By virtue of the foregoing section the state Legislature has delegated the power of determining the County Treasurer's compensation to the county court. See Sanderson vs. Pike County, 195 Mo. 598, 1. c. 605:

"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."

Also, State ex rel. Dietrich vs. Daves, 287 S. W. 430, 1. c. 431:

"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 respect 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," \* \* \*

We are aware of the fact that Section 12138 R. S. Mo. 1929, was repealed by the 57th General Assembly, and a new section enacted in lieu thereof, but it has not been materially changed in respect to the present inquiry, and the new Section does not become effective until 1936.

We are next confronted with the limitations, if any, upon the power of the County Court in fixing the salary of the County Treasurer.

II.

ONLY LIMITATION ON COUNTY COURT  
IS THAT IT BE JUST AND REASONABLE  
IN FIXING COMPENSATION.

The only constitutional provision regarding the changing of the compensation of the County Treasurer is found in Section VIII of Article XIV of the Constitution of Missouri. This section reads 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."

It is to be noted that this provision is a limitation only upon the power to increase the salary or compensation of the county officer, but in no way limits the power of the County Court to reduce or diminish the compensation.

It is a recognized law of this State that a public officer has no vested interest in his office or in the compensation provided therefor. This is well stated in the case of Sanderson vs. Pike County supra, wherein the Court stated at page 605 as follows:

"\* \* \* It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it.\* \* \*

Such compensation is not the creature of contract nor dependent upon the fact, or value of services actually rendered,\* \* \*and cannot be recovered upon quantum meruit.\* \* \*

There being no constitutional provision prohibiting the reduction and no vested interest or right to the compensation, we are left to the limitation which is placed upon the County Court' power by the statute itself to-wit, that the compensation allowed shall be just and reasonable. We again refer to the case of State ex rel. Dietrich vs. Daues supra, wherein the Court stated at <sup>48e</sup> 431 as follows:

"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.\* \* \*

III.

COUNTY COURT HAS POWER TO  
DIMINISH COMPENSATION OF TREASURERS  
DURING THE TERM.

In the early case of Givens vs. Daviess County, 107 Mo.603, the Supreme Court passed upon the power of the County Court to reduce the salary of the County Treasurer during his term of office. And at page 609 remarks as follows:

"\* \* \*the county court of defendant county had the undoubted right, at least within the limits of reasonableness and justice, to determine the compensation plaintiff should receive for his services as treasurer, and to diminish the same during the term, if in its judgment circumstances demanded a reduction.\* \* \*

The ruling in the foregoing case was recognized in the late case of Dietrich vs. Brickey, 48 S. W. (2d) 69, l. c. 70:

"Plaintiff concedes the power of the county court, in the exercise of an honest discretion to reduce his salary, but insists that the weight of the evidence shows that the order of the county court reducing his salary was made arbitrarily, corruptly, and fraudulently, and not in the exercise of an honest discretion, and asks that this court reverse the judgment of the circuit court and direct that court to set aside the order of the county court and enjoin its enforcement.\* \* \*

In the case last quoted, the County Court had reduced the salary of the County Treasurer from \$1500.00 to \$1000.00 per annum during his term. The County Treasurer brought an injunction suit against the County Court alleging that they had made the reduction arbitrarily, corruptly and fraudulently and that any sum of less than \$1500.00 per annum was not just and reasonable compensation. The Circuit Court found that the County Court had in fact acted i

accordance with their best judgment based upon facts within their knowledge and not for any ulterior motive and accordingly denied the relief sought. This finding was affirmed, the Court stating, l. c. 71:

"We cannot say, in view of this evidence, that the order of the county court was made arbitrarily, corruptly, or fraudulently, or that there was an abuse of discretion in making the order."

CONCLUSION.

From the foregoing authorities it is the opinion of this office that the County Court has the power to reduce the salary of a County Treasurer during his term; provided, the salary fixed is just and reasonable and the County Court has not acted arbitrarily, corruptly or fraudulently in making the order of reduction.

Respectfully submitted,

HARRY G. SALTNER, JR.  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

HGW:MM