

STATE HIGHWAY COMMISSION: Salaries of Chief Counsel and legal Assistants.

8-25

August 22, 1933



Hon. Louis V. Stigall
Chief Counsel
State Highway Department
Jefferson City, Missouri

Dear Mr. Stigall:

Your letter of August 14th addressed to General McKittrick requesting an opinion relating to the salaries of yourself and legal assistants of the State Highway Department has been handed to me for answer. For convenience your letter is quoted below:

"By virtue of authority granted the Highway Department by statute, I desire to call upon you for an opinion as to the interpretation to be given Section 2-A of the Appropriation Bill, Laws of Missouri 1933, page 114. I do this for the reason that I do not like to pass on the matter of my own salary and those of my assistants.

First: Does the section apply personally to officers and employees who were here in 1932 or does it apply to the office held by such person?

I also notice a different wording in the first sentence from the wording used in the rest of the sentences, to-wit: the first sentence refers to amounts 'paid to said employees for the same period in 1932'; whereas, in the next sentence the working is 'whose salaries range'.

Second: Is it correct in my case to take 20% from \$6,000 if the Commission shall so desire?

Third: Since my assistants were all paid different amounts during 1932, could one

man who was here last year receiving \$270 per month be now put in place of one who was receiving \$287 per month and has gone away--there being no different offices known as first, second and third assistant, or would the statute apply to the employee and not to the office?

Fourth: Did the section apply to those who were not here in 1932, like Mr. White, Mr. Lozier, and myself?

I would appreciate your opinion in these matters."

It is the opinion of this department that Section 2a, entitled "Salaries of employees", p. 114, Laws of Mo. 1933, which is as follows:

"The State Auditor shall not audit, nor shall the State Treasurer pay any salaries by virtue of the provisions of Sections 1 and 2 of this Act to any of the officials or employees of the State Highway Department in excess of 75% of the amount paid to said employees for the same period in 1932, when the salaries authorized and paid during such period to any of such officers or employees exceed the sum of \$7500.00 per annum; 80% of such salary to officers or employees whose salaries range from \$6000.00 to and including \$7500.00 per annum; 85% of such salary to officers or employees whose salaries range from \$4000.00 to \$5999.00 per annum; 90% of such salary to officers and employees whose salaries range from \$2500.00 to \$3999.00 per annum; and 95% of such salary to officers or employees whose salaries range from \$2000.00 to \$2499.00;"

applies or refers and means that the section is to govern the reduction of salaries of all employees of the State Highway Department and that it has no application personally to the employees of 1932, but rather to the position and duties of the employees. In other words, the section contemplates a reduction in the salaries of the position irrespective of the individual who holds the position and

the emolument of the position. The amount of the reduction varying according to the amount of the salary paid to the holder of the position.

The title of the section "Salaries of employees," would indicate that it relates to the various positions held by the employee and not to the employee personally or individually.

We fail to see any conflict or are we able to apply any different meaning to the phrase "paid to said employees for the same period in 1932," found in the fifth line, and the phrase "whose salaries range," which phrase is used throughout the remainder of the section. If an employee was receiving more than \$7500.00 per annum in 1932, the salary of the position so held by the employee regardless of whom he might be at the present time should receive 75% of the former salary. And if an employee received, or "whose salary ranged" from six to and including seventy-five hundred dollars, he should be receiving 80% of the salary received by the employee holding the same position in 1932, irrespective of whom he might be or his salary at the present time.

Neither the constitution nor the statutes in any way contemplate that the salary is peculiar to the individual rather than to the position. There is no law which gives anyone the right in succeeding another individual where the salary or the remuneration from the position has been fixed to vary because of the individual himself.

Our statutes provide individual cases of what the procedure should be in case of a vacancy in office. Section 3232 R. S. Mo. 1929, says:

"If any civil or military officer having any record, books or papers appertaining to any public office or any court shall resign, or his office be vacated, he shall deliver to his successor all such records, books and papers."

Thropp on Public Officers, Section 345, p. 345, says:

"As we have shown in a previous chapter, in this country an office is not regarded as property nor has the officer any vested right therein." * * *

We note by the above authorities that the office or position is not peculiar to the individual but that rather the individual is to fit into the office or the position. Therefore, you and the members of the legal staff are to be guided in the amounts of your salaries solely by what your predecessors in the positions were receiving in 1932. And to arrive at the amount of the compensation, there should be deducted from the salaries which your predecessors were receiving in 1932, the percentage in the amounts as the various salaries ranged in Section 2a, Laws of Mo. 1933.

Regarding your personal salary, we find under Section 8098 R. S. Mo. 1929, that you are selected and the salary is to be fixed by the commission not to exceed \$6000.00. Said section being as follows:

"The state highway commission shall select and fix the salary, which salary shall not exceed \$6,000 per year of a chief counsel who shall possess the same qualifications as judges of the supreme court and who shall serve at the pleasure of the commission and shall appear for and represent the commission in all actions and proceedings under this article or any other law administered by the highway commission, or in any decision, order or proceeding of the commission, or of the chief engineer and shall commence, prosecute or defend all actions or proceedings authorized or requested by the commission or to which the commission is a party, and shall advise the commission or the chief engineer, when requested in all matters in connection with the organization, powers and duties of the chief engineer. The chief counsel shall, with the consent of the commission, appoint such assistant attorneys as the commission may deem necessary and their salaries shall be fixed by the commission. The legal department of the commission shall be furnished offices in the state highway building."

That Section 8094 R. S. Mo. 1929, creating the Highway Commission, which is as follows:

"There is hereby created a state highway commission, which shall be vested with the powers and duties specified in this article, and also all powers necessary or proper to enable the commission, or any of its officers or employees, to carry out fully and effectively all of the purposes of this article."

places all the power over all employees in said commission and that they are the officers and the remainder of the positions in the highway department are held by employees.

In the case of yourself, construing Section 2a, as we have heretofore, as applying to the position held by the employee in 1932, and not to the employee personally or individually, it is the opinion of this department that you should receive in salary 80% of the amount your predecessor was receiving in 1932, providing he was receiving the maximum sum of \$6000.00. If he was receiving less than \$6000.00, then you should receive as compensation 80% of the amount he so received. This should govern the amount of your salary at the present time.

You state "is it correct in my case to take 20% from \$6000.00 if the commission shall so desire?"

Under Section 8098 quoted supra, it would appear that the commission can fix your salary at any amount not to exceed \$6000.00, and until the commission should meet and fix your salary at \$6000.00, it is the opinion of this department that you could not take 20% from \$6000.00 and receive the same in salary but that your salary should be governed entirely by the amount your predecessor received. As we construe the section, it was the legislative intent to reduce all the salaries of every employee ranging over \$7500.00 per annum, down to \$2000.00 per annum, and if it is possible to abrogate this section in one instance it would be possible to abrogate it as to all employees and thereby overthrow the intent of the legislature.

As to your assistants, you desire to know whether or not one man who was in the department last year receiving \$270.00 per month, could be placed in a position which last year paid \$297.00 per month, as the former occupant has now left the department. Having held in this opinion that the salary goes with the position and not with the individual, it is the opinion of this office that you could place the assistant in the position paying \$297.00 per month. In other

words if the position paid \$297.00 per month in 1932, you could place any assistant you desire in the position but he would be subject to the reduction as set forth in Section 2A, according to the range of the salaries.

Answering your fourth question, "would the section apply to those who were not here in 1932 like Mr. White, Mr. Lozier and myself?" Repeating that the salaries under Section 2a, follows the position and not the individual, it is the opinion of this department that it applies to all of you. If Mr. Lozier and Mr. White have succeeded certain former legal assistants and have assumed the position and duties of the former assistants, then the compensation should be the same as the compensation of the former assistants less the percentage of reduction as set out in Section 2a. But if Mr. White and Mr. Lozier have succeeded no one, and if either or both have been added to the legal staff or if either or both are occupying entirely new positions, that is, formerly held by no one, then their salaries would have to be fixed by the commission. In the case of an assistant who was an employee in 1932, he should receive in salary the same amount less the percentage reduction in Section 2a, providing he is now holding the same position, otherwise the salary of his predecessor, less the percentage of reduction.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

Attorney General.

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