

COUNTY TREASURER:

1. Sections 12130, 12133, 12134, 12137 and 12138 R. S. Mo. 1929 are not repealed until December 31, 1936.
2. County Treasurer's salary cannot be increased to a greater amount than as made under the estimate in the County Budget Act, but may be fixed at a lesser amount.

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May 17, 1935

Honorable Elvin S. Douglas  
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Dear Sir:

This Department is in receipt of your letter of April 29, wherein you request an opinion regarding the repealing of certain sections and enacting new ones in lieu thereof, as pertaining to county treasurer. Your letter is as follows:

"I wish you would advise me in regard to the following propositions:

The Laws of 1933, pages 338 and 339, repeal certain sections of the Revised Statutes of 1929 in regard to the election of County Treasurer, the giving of bond by the Treasurer, and his compensation, etc.

This law of 1933 then provides for consolidating the office of County Treasurer with the office of Collector in 1936.

As the provisions of this new law for consolidating the Treasurer's and Collector's offices merely regulate those offices after November, 1936, should the provisions of this new Act be construed as repealing the old law in regard to Treasurers until the offices are consolidated in 1936?

If the 1933 law, repealing certain sections of the old law concerning County Treasurers, is now in effect,

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what authority has the County Court to fix Treasurer's bond, his salary, etc.?

If the County Court has made no order fixing salary of the County Treasurer, but has approved a County Budget which, among other things, includes a certain salary for the County Treasurer, would that preclude the County Court from afterwards fixing a different salary for the Treasurer?

I shall greatly appreciate your advice in regard to these matters."

I.

SECTIONS 12130, 12133, 12134,  
12137 AND 12138 REVISED STATUTES  
MISSOURI 1929, ARE NOT REPEALED  
UNTIL DECEMBER 31, 1936.

In 1933, at page 338 Laws of Missouri 1933, the Legislature passed an act repealing Sections 12130, 12133, 12134, 12137 and 12138 Revised Statutes Missouri 1929; these statutes related to the election of a County treasurer, the giving of a bond and the compensation. The Legislature then proceeded to enact section 12130 which relates to counties containing more than 40,000 population, the election of a treasurer to take place "On the Tuesday after the first Monday in November, 1936, and every four years thereafter."

Section 12132a consolidates or places under the Collector the office of Treasurer, the time for consolidation being "On and after the expiration of the term of office of the county treasurer on the 31st day of December, 1936."

The remaining sections, 12132b, to 12138a, relate to the office of treasurer in counties of more than 40,000,

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the County of Polk being less than 40,000 the office of county treasurer would terminate on December 31, 1936.

The question involved is, the Legislature having at the session of 1933 abolished certain sections pertaining to the election and the giving of bond and the salary of the county treasurer, and enacted new sections relating to the office of treasurer, what is the position of the county treasurer at the present time in so far as the apparently repealed statutes may affect it?

There are a number of elements involved in determining this question. We shall discuss first the element of the intention of the Legislature in passing the Act of 1933. The heading in the title of the act is as follows:

" POLITICAL SUBDIVISIONS: Relating to Consolidation of Offices of Treasurer and Collector in Certain Counties.

AN ACT to repeal sections 12130, 12133, 12134, 12137, and 12138, Article 8, entitled 'County treasurers, funds and warrants.' Chapter 85, Revised Statutes of Missouri, 1929, and to enact eight new sections in lieu thereof pertaining to the same subject to be known as sections 12130, 12132a, 12132b, 12133, 12134, 12137, 12138, and 12138a."

Section 1 is as follows:

"That sections 12130, 12133, 12134, 12137, and 12138, article 8, entitled, 'County treasurers, funds and warrants,' chapter 85, Revised Statutes of Missouri, 1929, be and the same are hereby repealed and eight new sections are hereby enacted in lieu thereof to be known as sections 12130, 12132a, 12132b, 12133, 12134, 12137, 12138, and 12138a, and to read as follows:"

The other sections, as heretofore mentioned, in so far as the element of time is considered, are not to

become effective until January 1, 1937. If the Legislature had inserted the words, in substance, "On and after January 1, 1937," in Section 1, then the whole act, and all the sections, would have been prospective in its aspect and then this question would not have arisen. Proceeding with the question of the intention of the Legislature as it may effect the act in all of its component sections, the Supreme Court in the case of *Setz v. Columbia Telephone Co.* 24 S. W. (2d) 1. c. 228, said:

"Apparently conflicting provisions must be reconciled, if possible, with the general legislative purpose. *Dysart v. City of St. Louis* (Mo. Sup.) 11 S. W. (2d) 1045, 62 A. L. R. 762. Sections of a statute must be construed with other sections touching the same subject-matter. *State ex rel. Thompson v. Dirckx* (Mo. Sup.) 11 S. W. (2d) 38. Courts may consider expediency of law in ascertaining intent. *State ex rel. v. Regan*, 317 Mo. 1216, 298 S. W. 747, 55 A. L. R. 773. Intent of the Legislature must be ascertained and given effect as expressed in the statute. *Rogers Foundry Co. v. Squires*, 221 Mo. App. 17, 298 S. W. 470. Courts can not interpolate in a statute where omission is not plainly indicated. *State ex rel. Cobb v. Thompson* (Mo. Sup.) 5 S. W. (2d) 57. To get at the true meaning of the language in a statute the court must look at the whole purpose of the act, the law as it was before the enactment, and the change in the law intended to be made. *Pembroke v. Huston*, 180 Mo. 627, 636, 79 S. W. 470. It is a useful and safe rule of construction to resolve any ambiguity or obscurity in a statute in favor of such reading as will best meet the demands of natural justice, so far as that can be done without violence to settled legal principles. *Plum v. Kansas City*, 101 Mo. 525, 533, 14 S. W. 657, 10 L. R. A. 371; 25 R. C. L. sec. 258."

In the case of *Pembroke v. Huston* 180 Mo. 627,

quoted above, the court said that the true meaning of an act must be gleaned from the whole purpose of the law relating to the same before the passage of the act and the change in the law intended to be made.

In the decision in the case of *Spurlock v. Wallace et al.* 204 Mo. 1. c. 678, the court said:

"In construing statutes, it has been held that the purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms, and that the cardinal purpose or intent of a whole act shall control, and that all the parts be interpreted as subsidiary and harmonious. Words and clauses in different parts of a statute must be read in a sense which harmonizes with the subject-matter and general purpose of the statute. (2 Lewis' *Sutherland Statutory Construction* (2 Ed.)," sections 369 and 370.)."

In the case of *St. Louis v. Kellman* 235 Mo. 1. c. 695, the court, in defining the word "repeal", said:

"Attending to that term, what does the word 'repeal' mean when used by lawmaker or judge? 'Repeal' is defined as the abrogation or annulling of a previously existing law by the enactment of a subsequent statute, which either declares that the former law shall be revoked and abrogated or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two can stand in force - the latter is the 'implied' repeal, heretofore mentioned; the former, the 'express' repeal. (Black, L. Dict. Tit. 'Repeal!') Bouvier defines it to be: 'The abrogation or destruction of a law by a legislative act.' (Bouv. L. Dict. Tit. 'Repeal.')

Note the word destruction. Webster defines

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it; To recall; to rescind or abrogate by authority; to revoke. He gives among its synonyms annul, cancel, reverse, abolish. He defines the noun 'repeal' as meaning: Revocation, rescission, abrogation. Abrogate, in turn, means to annul by an authoritative act, to abolish by the authority of the maker, to repeal. Other instructive shades of meaning come out in accredited definitions of the several synonyms, but the foregoing are enough for our purpose. The repeal of an ordinance, then, is accomplished when it is destroyed, abolished, abrogated, cancelled, annulled recalled or rescinded by a later one."

We cannot assert that the Legislature did not intent to repeal the statutes as mentioned in Section 1 quoted supra, as no such conclusion could be drawn from the reading of the entire act. We are concerned with the question of the time the repeal is to become effective. As stated in the above decision, the whole act and the purpose and object in view must be taken into consideration in determining the element of time. In the case of School District v. McFarland 154 Mo. App. 1. c. 416, this principle is found enunciated as follows:

"The reasoning in the case of State ex rel. v. Fry, 186 Mo. 198, 85 S. W. 328, is applicable here. In that case there was a village school district consisting of territory partly in Newton county and partly in McDonald county, and it was attempted, under section 9747, Revised Statutes 1899, to create a country school district out of the territory on the Newton county side of the line. It was contended that the general words, 'any school district,' as used in section 9747 embraced a village school district as well as a country school district. The Supreme Court held that this contention could not be maintained, saying;

'It is a canon of interpretation that "all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used in reference to the subject-matter in the mind of the Legislature, and strictly limited to it." (Endlich, Int. of Stat., sec. 86.) It is indispensable to a correct understanding of a statute to inquire what is the subject of it. (2 Lewis' Sut. on Stat. Con. (2 Ed.), sec. 347).' . . . .  
'The subject of section 9747 of article 1 and of the sections preceding it is distinctly stated in section 9739, the first section of that article, to be "all subdistricts, as organized and bounded," i. e., country school districts, and under the canon of construction aforesaid, the words "any school district" in section 9747 must be limited to country school districts, whose organization was alone provided for in article 1, and not to village school districts whose organization was provided for in article 2, unless it appears by other legislation that such was not the legislative intent.' "

The rule effecting the effective date is discussed in the case of State v. Bockelman 240 S. W. 1. c. 211, wherein the court said:

"As said, the act of 1919 (Laws of 1919, p. 672), now section 734, R. S. 1919, repealed section 1005 of the act of 1913, and enacted a new section in lieu thereof. The material portions of this section we have set out in our statement. This law was passed in 1919, but by its terms was not to become effective until the 1st day of January, 1921. In the construction of this law, it is of vital importance to determine as of what date the law speaks, for, if it be taken to

speaking as of the date of its passage, the words therein used might have one meaning and application; whereas, if it is to be taken as speaking of the date when it becomes effective, the words used therein might have a totally different application and meaning. Where there is no constitutional restrictions, the Legislature may fix a future date upon which a law shall go into effect. 36 Cyc. pp.1192 and 1200; Ex parte Ah Pah, 34 Nev. 292, 119 Pac. loc. cit.774. In the latter authority it is said:

'The Legislature, in the absence of constitutional restrictions, is free to fix in each act the time it is to take effect, and an examination of our Constitution reveals no such prohibition. Matter of Kenna, 91 Hun. 178, 36 N. Y. Supp. 280; Thomas v. Scott, 23 La. Ann. 689; Price v. Hopkin, 13 Mich. 318; Honeycutt v. St. Louis, 40 Mo. App. 674; Penn Co. v. State, 142 Ind. 428, 41 N. E. 937; 36 Cyc. 1192, 1193; Am. & Eng. Ency. of Law, vol. 36, pp.563-565.'

The Missouri Constitution (1875, section 36 of article 4) places no inhibition upon the Legislature as to fixing a future date for a law to become effective. It prohibits them from becoming effective upon their passage and approval, except in excepted cases. The Legislature has often asserted its right to pass a law to become effective in the future, and our cases seemingly have approved them. State v. Brassfield, 81 Mo. 151, 51 Am. Rep. 234; State v. Orrick, 106 Mo.111, 17 S. W. 176, 329; State ex rel. v. Edwards, 136 Mo. 360, 38 S. W. 73."

In the case of State ex rel. Elsas v. Workmen's Compensation 318 Mo. 1012, the Supreme Court sustained these general rules, saying, "The General Assembly may provide when certain sections of the law shall become effective."

The statute may have a potential existence although it will not go into effect until a future time. The Legislature may provide that different parts of a statute may go into effect at different times. The statute should be construed to carry out the legislative intent, and reasonable effect should be given to every word, phrase and sentence when possible. The right of the court to resort to extrinsic evidence to determine the time when a statute should take effect, is discussed in the case of Gardner v. Collector 6 Wall. U. S. 499-511, as follows:

"Whenever a question arises in a court of law \* \* \* \* of the time when a statute took effect \* \* \* \* the judges who are called upon to decide it, have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question; always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule."

#### CONCLUSION

Bearing in mind the rules and principles, and the intention of the Legislature of the time the Act was to become effective, we are of the opinion that it was the intention of the Legislature to abolish the office of the County Treasurer and place its duties under the office of County Collector, in counties of 40,000 or less in population, on and after December 31, 1936, and that the whole act must be read together.

The time when Sections 12130 Revised Statutes Missouri 1929, and 12132 Revised Statutes Missouri 1929, should become effective also carries with it the intention

that the sections mentioned in Section 1 as being repealed should not become effective until the same time, to-wit, December 31, 1936. If we are correct in our conclusion the result is that the Treasurer shall continue to act, in so far as his duties are concerned, and his compensation and giving of bond, as set forth in Sections 12133, 12134 and others, shall continue to be in full force and effect until the expiration of the present term, at which time said sections will, as stated in Section 1 of the new act be automatically repealed. We do not believe that the Legislature intended to pass the new act repealing the sections herein mentioned, thereby resulting in a condition in which the county treasurer, until December 31, 1936, is without provision for the giving of bond, additional bond, and fixing of compensation, and that the construction herein placed on the act is one which will meet the demands of natural justice and such construction can be done without violation of legal principles.

## II.

COUNTY TREASURER'S SALARY  
CANNOT BE INCREASED TO A  
GREATER AMOUNT THAN AS MADE  
UNDER THE ESTIMATE IN THE  
COUNTY BUDGET ACT, BUT MAY  
BE FIXED AT A LOWER AMOUNT.

Regarding your question relating to the county court having made no order fixing the salary of the county treasurer, the same having been approved and included in the estimate under the County Budget Act.

We assume that this estimate was made under Class 4 Laws of Missouri 1933, page 341, which is as follows:

"Class 4: The county court shall next set aside the amount required to pay the salaries of all county officers

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where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

Section 8 Laws of Missouri 1933, page 342, is as follows:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year and the section or sections of law under which he claims his office is entitled to the amount requested, also he shall submit an itemized statement of the supplies he will require for his office, separative those which are payable under class 4 and class 6. Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary revenue. No officer shall receive any salary or allowance for supplies until

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all the information required by this section shall have been furnished. The clerk of the county court shall prepare and file an estimate for his office; also for the expense of the judges of the county court. If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4."

In view of the above section, we are of the opinion that if the county court has included in the Budget estimate the amount to be paid to the county treasurer that the county court would be precluded from changing the amount of salary greater than that included in the estimate, but there is no provision against changing the amount of the salary to a less amount than that included in the estimate, as the county court has the power to fix the salary of the county treasurer by Section 12138 Revised Statutes Missouri 1929 "at such compensation as may be deemed just and reasonable."

Respectfully submitted,

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APPROVED:

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