

COUNTY TREASURER - Entitled to such compensation as county court deems advisable not exceeding $\frac{1}{2}$ of 1% on all school moneys disbursed by him.

February 26, 1935.



Hon. Otto G. Schell,
Treasurer of Miller County,
Tuscumbia, Missouri.

Dear Sir:

This department is in receipt of your letter of January 29 requesting an opinion as to the following state of facts:

"I am asking you for your opinion on section 9266 (County Treasurers and their duties--bond required as custodian of school moneys--compensation).

When I was elected Treasurer of this county, the court set my salary at \$80 per month plus $\frac{1}{2}$ of 1% commission for handling the school funds, and not being thoroughly posted on the law, I did not collect on school moneys that I handled for the various high schools, but only on rural schools. The former Treasurer informs me that he always collected this commission on all school moneys, including that disbursed to the various high schools, and says that I am also entitled to that, which would cause me to be able to collect the back commissions for the past two years.

I would appreciate your opinion on this, whether I am entitled to collect on all school moneys handled, and in my case, am I entitled to the back commissions that I have not collected?"

Section 9266, R.S. Mo. 1929 provides in part as follows:

"****and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent. of all school moneys disbursed by him, and to be paid out of the county treasury."

It is plain from a reading of this statute that the Legislature, recognizing the nature of the services rendered by the county treasurer to a county, intended to leave the fixing of compensation for such treasurer to the discretion and judgment of the county court of that county; however, the Legislature expressly stated the maximum percentage that could be allowed the county treasurer under this section. This provision of the law did not limit the county court as to the minimum amount, but did prescribe the maximum amount to be paid such officer as compensation.

From the facts as stated in your letter, it would appear that you viewed Section 9266, supra, as entitling you to one-half of 1% on all school moneys disbursed by you as county treasurer. We are unable to concur in this view of the statute, however, for a county treasurer is entitled only to such compensation for his services as the county court may deem advisable not exceeding the percentage heretofore referred to.

This question was settled in this state by the Supreme Court in the case of Sanderson v. Pike County, 195 Mo. 598, wherein Judge Brace said (l.c. 604, 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. With this discretion neither this court nor the circuit court has any right to interfere.

* * *

Such compensation is not the creature of contract nor dependent upon the fact, or value of services actually rendered (State ex rel. v. Walbridge, supra, and authorities cited on pp. 203 and 204), and cannot be recovered upon quantum meruit. (Wolcott v. Lawrence Co., 26 Mo. 272, and cases supra).

This suit was brought upon the theory that under the provisions of section 9849, supra, the plaintiff was entitled to 'one-half of one per cent of all school moneys disbursed by him', when, in fact, he was only entitled 'to such compensation for his services as the county court may deem advisable', not exceeding that amount.

There was no legal evidence tending to prove that the county court deemed it advisable to pay him for such services any more than they did in fact pay him. *****

CONCLUSION

In view of the foregoing, it is the opinion of this department that a county treasurer is entitled to such compensation for his services as the county court may deem advisable, not exceeding one-half of one per cent of all school moneys disbursed by him.

In this connection, it must be remembered that "the county court is a court of record and its actions and proceedings can only be known by its record. A contract with such court cannot be established by parol evidence." (Sanderson v. Pike Co., supra)

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

JWH:AH