

COUNTY TREASURER: Committee Substitute for House Bill
COMPENSATION: No. 255 by implication repeals last
clause of Section 10400, R. S. Mo.
1939, authorizing compensation for
disbursing school monies.

October 14, 1941

Honorable David E. Blanton
Prosecuting Attorney
Scott County
Sikeston, Missouri



Dear Sir:

Under date of August 26, 1941, you wrote this office for an opinion, as follows:

"Housebill No. 255 pertains to the salary paid to the County Treasurers of the several counties of this State, and said Housebill repeals Section 13,800 Article 8, Chapter 100, Revised Statutes of the State of Missouri, 1939.

"The Housebill provides for the payment of the salary to the Treasurer in accordance with the census of the respective counties. Please advise my office as to when this Bill becomes effective and as to when the respective counties will pay the salaries referred to in the new bill; that is, is it to be paid as of September 1st, 1941, January 1st, 1942 or January 1st, 1943. Also, will the Treasurer be entitled to any commissions on the school money that he handles."

At the time of the receipt of your request, an opinion had been prepared as to the effective date of C. H. S. B. 255, referred to in your request, and a copy of this opinion was sent to you. But your letter contains an additional request as to the effect of C. S. H. B. 255 upon the compensation of county treasurers for disbursing school

Hon. David E. Blanton

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October 14, 1941

monies, which compensation is provided for in Section 10400, Article 2, Chapter 72, R. S. Missouri, 1939, by the following clause:

"* * * 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."

You will observe this is found in the laws pertaining to schools and not to county treasurers.

C. S. H. B. 255 is now published in Laws of Missouri, 1939, at page 534, and is as follows:

"AN ACT to repeal Section 13800, Article 8, Chapter 100, Revised Statutes (of) Missouri, 1939, pertaining to the compensation of county treasurers and deputy county treasurers and to enact in lieu thereof a new section pertaining to the same subject matter, to be known and numbered as Section 13800, Article 8, Chapter 100, Revised Statutes (of) Missouri, 1939.

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

"SECTION 1 - That Section 13800, Article 8, Chapter 100, Revised Statutes (of) Missouri, 1939, pertaining to the compensation of county treasurers be and same is hereby repealed; and a new section to be known and numbered as Section 13800, Article 8, Chapter 100, Revised Statutes (of) Missouri, 1939, pertaining to the same subject matter is enacted in

lieu thereof, and to read, as follows:

"SECTION 13800 - The county treasurers of the several counties of this State (except counties under township organization) shall receive for their services annually, to be paid out of the county treasury in equal monthly installments at the end of each month by a warrant drawn by the county court upon the county treasury, the following sums: In counties having 10,000 inhabitants or less, the sum of \$1,200; in counties having more than 10,000 inhabitants and not more than 12,500, the sum of \$1,500; in counties having more than 12,500 inhabitants and not more than 15,000, the sum of \$1,800; in counties having more than 15,000 inhabitants and not more than 20,000, the sum of \$2,200; in counties having more than 20,000 inhabitants and not more than 25,000, the sum of \$2,400; in counties having more than 25,000 inhabitants and not more than 30,000, the sum of \$2,400; in counties having more than 30,000 inhabitants but not more than 35,000, the sum of \$2,500; in counties having more than 35,000 inhabitants but not more than 40,000, the sum of \$3,200; in counties having more than 40,000 inhabitants but not more than 75,000, the sum of \$3,500; in counties having more than 75,000 inhabitants but not more than 120,000, the sum of \$4,000; and in all counties having more than 75,000 inhabitants and not more than 120,000 inhabitants, the county treasurer may employ one deputy at a salary of \$1,680 to be paid monthly in same manner as county treasurers are paid; Provided, that this act shall not apply to any county now or hereafter containing a city of not less than 70,000 or more than 200,000 in population, to be determined by the last federal decennial census.

Provided, salaries set out and pre-
scribed in this section shall be in
lieu of any other or additional salaries,
fees, commissions or emoluments of what-
soever kind for county treasurers in all
counties of this state to which this
section, by its terms, applies, the pro-
visions of any other statute of this
state to the contrary notwithstanding."
(underscoring ours)

House Bill 255, as originally introduced, did not contain the above underscored clause. It is as follows:

"AN ACT To repeal Section 13800, Article 8, Chapter 100, Revised Statutes Missouri 1939, pertaining to the compensation of county treasurers and to enact in lieu thereof a new section pertaining to the same subject matter, to be known and numbered as Section 13800, Article 8, Chapter 100, Revised Statutes Missouri 1939.

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

"Section 1 - That Section 13800, Article 8, Chapter 100, Revised Statutes Missouri, 1939, pertaining to the compensation of county treasurers be and the same is hereby repealed; and a new section to be known and numbered as Section 13800, Article 8, Chapter 100, Revised Statutes Missouri, 1939, pertaining to the same subject matter is enacted in lieu thereof, and to read as follows:

"Section 13800 - The treasurers of the counties of this state, not otherwise provided for, shall receive for their services annually, to be paid out of the

county treasury in equal monthly installments at the end of each month by warrant drawn by the county court upon the county treasury, the following sums: In counties having a population of less than 7500 persons, the sum of \$1000.00; in counties having a population of 7500 persons and less than 10,000 persons, the sum of \$1300.00; in counties having a population of 10,000 persons and less than 15,000 persons, the sum of \$1600.00; in counties having a population of 15,000 persons and less than 20,000 persons, the sum of \$1800.00; in counties having a population of 20,000 persons and less than 25,000 persons, the sum of \$2100.00; in counties having a population of 25,000 persons and less than 30,000 persons, the sum of \$2400.00; in counties having a population of 30,000 persons and less than 35,000 persons, the sum of \$2700.00; in counties having a population of 35,000 persons and less than 40,000 persons, the sum of \$3000.00; in counties having a population of 40,000 persons and less than 75,000 persons, the sum of \$3200.00; in counties having a population of 75,000 persons and less than 120,000 persons, the sum of \$3200.00."

The difference between the bill as originally introduced and as it was finally passed and became a law, will be readily noted.

In order to reach a proper understanding of your question and solve the problem, it is necessary that we go back to the origin of what was Section 13800, R. S. Missouri, 1939, and the clause in Section 10400, R. S. Missouri, 1939, which permits the county court to allow to the treasurer for disbursing school moneys not to exceed one-half of one per

cent of the amount disbursed, to be paid out of the county treasury.

What was Section 13800, R. S. Missouri, 1939, originated in 1855, and was slightly different in form. It first appeared in the laws of 1855, at page 523, in an Act entitled:

"AN ACT To Establish and Regulate
County Treasuries."

This Act contained four articles. Article I, of the election, qualification and duties of the treasurer. Article II, of the duties of the collectors, clerks and other officers. Article III of the powers and duties of the Court. Article IV of miscellaneous provisions. The portion relating to the compensation of the treasurer is found on page 523, Section 18, of Article I, and is as follows:

"He shall be allowed for his services under this act, such compensation as may be deemed just and reasonable."

At this time no compensation was provided for the treasurer for his duties in connection with school funds, although he performed some duties and some of the duties in connection with the disbursement of school funds were performed by the school commissioner. With slight amendment, it remains the law of the state until Section 13800, R. S. Missouri, 1939, was repealed by the Sixty-first General Assembly. The section, as it was before repealed, is 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."

The section of the law giving to the county treasurer compensation for the disbursement of school moneys first appeared in the laws of 1865, in an Act entitled:

"AN ACT To provide for the Reorganization, Supervision and Maintenance of common schools."

This Act is found in Laws of 1865, at page 170, and at page 180, Section 31 of the Act, is the following:

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

This clause follows the enumeration of duties of the treasurer in connection with school funds. Later, in 1870, the amount was reduced to not to exceed one-half of one per cent, and still later the clause, "and to be paid out of the county treasury," was added. In the case of Sanderson v. Pike County, 195 Mo. 598, this clause was held not to fix the compensation, but merely to authorize the county court to pay the compensation if it deemed it proper and took affirmative action in the matter to pay the treasurer.

Section 13800, R. S. Missouri, 1939, supra, is a general law treating of the compensation of county treasurers for the handling of county funds, and for the duties performed in connection with county funds. The clause of Section 10400, R. S. Missouri, 1939, supra, is in the nature of a special law authorizing compensation for county treasurers for the performance of an added duty in connection with the disbursement of school funds.

This places us in the situation of having a later enacted general law treating generally of the compensation of county treasurers and a prior law in the nature of a special law, authorizing compensation for county treasurers for

duties performed in connection with school funds. There seems to be a conflict between the last clause of C. S. H. B. 255, and the last clause of Section 10400, R. S. Missouri, 1939. There is no direct repeal of the clause of Section 10400 by C.S.H.B. 255. A later statute dealing with the same subject matter repeals by implication a prior one treating with the same subject matter.

In the case of *Young v. Greene County*, 119 S. W. (2d) 369, l. c. 374, it is said:

"* * * If two statutes deal with the same subject matter and are inconsistent with each other, so that both cannot be operative as to such subject matter, the later act will be regarded as a substitute for the earlier one and will operate as a repeal thereof, although it contains no express repealing clause. *State ex rel. Mo. Pac. Ry. Co. v. Pub. Serv. Comm.*, 275 Mo. 60, 204 S. W. 395. As said by Judge White the 1929 act (Sec. 2092, supra) made no mention of the 1925 act (Sec. 2095, supra), but as it covered the same subject matter and is inconsistent with the earlier act it necessarily operated as a repeal thereof."

This would indicate that C. S. H. B. 255 would act as a repeal by implication of the last clause of Section 10400. However, there is an exception to this rule. It is that a later general statute will not serve to repeal by implication a prior special statute, the special statute remaining an exception to the general statute. The following brief quotation from the case of *State ex rel. Tax Commission v. Crawford*, 303 Mo. 652, l. c. 662, supports this statement:

"* * * Further, a special act is not to be held repealed by one of general nature, even of later enactment, in the

absence of negative words or unless an irreconcilable inconsistency is necessarily raised. (State ex rel. M. & M. Railroad Co. v. County Court, 41 Mo. 453.) And if a special provision applicable to a particular object be inconsistent with even a later general law, the special provision will prevail. (State v. Green, 87 Mo. 583.)"

And again, in State ex rel. Hyde v. Buder, 287 Mo. 307, at l. c. 309, is the following:

"The repeal of statutes by implication is not favored by the courts, and the presumption is always against the intention to repeal where express terms are not used. To justify the presumption of an intention to repeal one statute by another either the two statutes must be irreconcilable or the intent to effect a repeal must be otherwise clearly expressed. 36 Cyc. 1071, 1072. The act of 1891, contains no repealing clause save as to section 7538, R. S. 1889, and respondents do not point out any clearly expressed intention to repeal the act of 1879, which was section 5957, R. S. 1889, now section 6386, R. S. 1919. The act, in reality, amends article 2 of chapter 138, R. S. 1889, by repealing section 7538 and being enacted in lieu thereof. * * * *"

From the above, it would seem to be doubtful whether or not the enactment of C. S. H. B. 255 did repeal by implication the last clause of Section 10400, R. S. Missouri, 1939, which is hereinbefore set out.

But, in construing a statute, the primary object is to ascertain the intention of the legislature. Grier v.

Railway Co., 286 Mo. 523; State ex rel. American Asphalt Roof Corporation v. Trimble, et al., 44 S. W. (2d) 1103. By reading House Bill 255, as originally introduced, and then reading the Committee Substitute for House Bill 255, which was enacted by the General Assembly and signed by the Governor, it seems to be quite apparent what the intention of the legislature was. The bill, as originally introduced, did not contain anything that would, in any way, affect any other section of the statute. But the Committee Substitute did contain the added clause which is set out, supra, providing that the compensation provided for in the bill should be in lieu of all other compensation of whatever kind in whatsoever section of the statutes provided for. The General Assembly had knowledge of the items of compensation, such as that for disbursing school moneys, which were provided for in other sections of the statutes. That would clearly indicate the intention of the General Assembly to provide for the fixed salary therein set out for county treasurers and to repeal by implication all other statutes and parts of statutes giving items of compensation to county treasurers.

Inasmuch as the General Assembly, by the body of the bill, showed its intention that the compensation therein provided for should be in lieu of all other compensation, it is necessary that we consider the title of the bill in order to determine whether or not the title is sufficiently broad to cover such an intention.

Section 28 of Article IV of the Constitution of Missouri is as follows:

"No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

The title of the original bill and of the Committee Substitute both provided for the repeal of Section 13800 and the enactment of a new section 13800, R. S. Missouri, 1939, in lieu thereof. Neither title makes any reference to the repeal of any other section or any part of any other section. And it would seem that by attempting to repeal by implication other statutes or parts of other statutes the bill is broader than the title. The title to the bill, as originally introduced, and as amended by the Committee pertained to the compensation of county treasurers.

In the case of *Graves v. Purcell*, 85 S. W. (2d) 543, at 1. c. 547, is found an excellent compilation of rules for applying Section 28 of Article IV of the Constitution. These rules are copied below.

"In determining the true meaning and scope of constitutional or statutory provisions, the intent and purpose of the lawmakers is of primary importance. This court has consistently held that the intent and purpose of the framers of our organic law in providing that 'no bill shall contain more than one subject which shall be clearly expressed in its title' was to limit the subject-matter of the bill to one general subject and to afford reasonably definite information to the members of the General Assembly and the people as to the subject-matter dealt with by the bill. *City of Kansas v. Payne*, 71 Mo. 159, loc. cit. 162; *State ex rel. v. Walker*, 326 Mo. 1233, 34 S. W. (2d) 124, loc. cit. 131. Apart from the basic principle just stated as to the general purposes sought to be achieved by the constitutional provision in question, this court has recognized the impossibility of formulating any general rule or principle of universal application which can be safely applied to test the sufficiency of the titles of

particular enactments and, in general, has given its sanction to the view that each case must be determined upon its own peculiar facts. *Witzmann v. Southern Railway Co.*, 131 Mo. 612, loc. cit. 618, 33 S. W. 181; *State ex rel. v. Jackson County*, 102 Mo. 531, loc. cit. 537, 15 S. W. 79.

*** Where the title to a bill contains comprehensive language followed by particulars of less comprehensive scope, there can be no question that as to all details within the scope of the narrower language employed the provisions of the bill must be confined to the limits of the narrower language contained in the title. *State ex rel. v. Hackmann*, 292 Mo. 27, 237 S. W. 742; *State v. Crites*, 277 Mo. 194, 209 S. W. 863. In some instances the particulars set forth in the title expressly or by necessary implication restrict the meaning and scope of more comprehensive language contained in the title, and in such instances it is clear both upon principle and authority that the provisions of the bill must be confined within the limits of the particulars specified. *State ex rel. v. Hackmann*, supra; *Vice v. Kirksville*, 280 Mo. 348, 217 S. W. 77; *Woodward Hardware Co. v. Fisher*, 269 Mo. 271, 190 S. W. 576. But in instances where the title to the bill descends into particulars which are neither expressly nor by necessary implication restrictive of the general purpose of the bill as set forth in its title, but are merely descriptive of some of the instrumentalities or means to be employed in effectuating the general purpose of the bill as declared in its title, there is no constitutional barrier to the inclusion in the bill of provisions which are germane to and within the scope of the general purpose of the bill as declared

in its title and which, although not set forth in the particulars expressed in the title, are not out of harmony with them. State ex rel. v. Buckner, 308 Mo. 390, 272 S. W. 940; State ex rel. v. Terte, 324 Mo. 402, 23 S. W. (2d) 120; State ex rel. v. Williams, 232 Mo. 56, 133 S. W. 1; State ex rel. v. Miller, 100 Mo. 439, 13 S. W. 677. Although the general principles just indicated have not heretofore been enunciated by this court in precisely the terms we have here employed, we think the general views here expressed have been fully sanctioned by the decisions of the court. Before proceeding to the consideration of the specific reasons urged in support of the contention that the statute here in question violates the provisions of section 28 of article 4 of the Constitution, we deem it appropriate to advert to certain fundamental principles which must be applied by us in properly determining the controverted issue. There is a presumption that the statute here assailed is constitutional. The burden rests upon the party questioning the constitutional validity of a statute to establish its unconstitutionality beyond a reasonable doubt, and if its constitutionality remains in doubt, such doubt must be resolved in favor of its validity. State ex rel. v. Terte, 324 Mo. 402, 23 S. W. (2d) 120; Forgrave v. Buchanan County, 282 Mo. 599, 222 S. W. 755. This court has long been committed to the principle that section 28 of article 4 of our Constitution must be liberally construed. State ex rel. v. Buckner, 308 Mo. 390, 272 S. W. 940; State v. Mullinix, 301 Mo. 388, 257 S. W. 121. A liberal construction of the constitutional provision in question requires that such construction

be fair, reasonable, and rational, to the end that legislative action shall not be thwarted and nullified by the courts by a resort to undue subtleties and refinements or extreme and artificial formalism."

The question is not without doubt. However, the Committee Substitute for House Bill 255 pertains generally to the compensation of county treasurers and anything coming fairly within that general subject could be dealt with in the act, unless the title is restrictive. Further, the bill is presumed to be constitutional unless shown beyond a reasonable doubt to be unconstitutional.

CONCLUSION

The conclusion follows that if Committee Substitute for House Bill 255 (Laws of 1941, page 534) be constitutional, and it is presumed so to be, then the General Assembly repealed by implication the last clause of Section 10400, R. S. No. 1939, which permitted the county court to allow the county treasurer not to exceed one-half of one per cent for disbursing school moneys to be paid out of the county treasury.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WOJ/rv