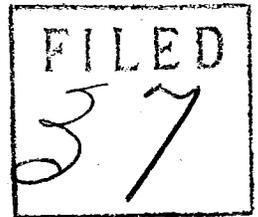


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SCHOOLS: Compensation of county superintendent for preparing budgets is part of his annual salary for the purpose of calculating his expense account.



December 3, 1947

12/15

Honorable Floyd E. Hamlett
County Superintendent
Caruthersville, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"Senate Bill # 177 of the 64th General Assembly provided \$955. per year to Pemiscot County to compensate the County Superintendent of Schools for additional duties in the preparation of a Budget for each school under his supervision. May this sum be considered a part of his annual salary in determining the amount allowed him for traveling expense as provided by Senate Bill # 41 of the 63rd. General Assembly."

The expense accounts of county superintendents in third class counties are provided for by Section 2 of act found at page 1709, Laws 1945. Said section reads in part as follows:

"The county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. * * * The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasury for the payment of same. * * * Provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage shall be four cents per mile for each mile actually and necessarily traveled * * *"

It will be observed by the foregoing provisions that the county superintendents are required to present bills to the county court setting forth their actual and necessary expenditures and traveling expenses, and the county courts are required to pay such bills, subject, of course, to the limitation in the first sentence of said Section 2 that the total traveling expenses for any one year shall not exceed twenty-five per cent of the annual salary of such superintendents. It, therefore, becomes necessary to determine what the "annual salaries" of the county superintendents are.

Section 1 of the act above mentioned provides for compensation of the county superintendent. Said section reads as follows:

"In counties of the third class in this state, having less than 7,000 population, the county superintendent of schools shall receive \$1050.00 per annum; in those having a population of 7,000 and less than 10,000, he shall receive \$1200.00 per annum; in those having a population of 10,000 and less than 12,000, he shall receive \$1350.00 per annum; in those having a population of 12,000 and less than 15,000, he shall receive \$1600.00 per annum; in those having a population of 15,000 and less than 25,000, he shall receive \$1800.00 per annum; in those having a population of 25,000 and less than 36,000, he shall receive \$2000.00 per annum; and in those having a population of 36,000 or more, he shall receive \$2100.00 per annum. The State of Missouri shall appropriate annually, out of the general revenue fund of State of Missouri, \$400.00 to each and every county of the third class. The county superintendent of schools shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasury."

It should be noted that in setting the amounts the county superintendent shall receive, said amounts are not designated either as salary or compensation. The act merely says that the county superintendent of schools shall receive a certain amount per annum. The last sentence of said Section 1 refers to the amount so received as his "salary".

S. B. No. 177 of the 64th General Assembly, about which you inquire, provides compensation to the county superintendent of schools for services required of him in preparing or causing to be prepared a budget for each school district under his supervision. The portion of said act dealing with his compensation reads as follows:

"As compensation for such services in counties of the third class having less than 7,000 population, the county superintendent of schools shall receive \$775.00 per annum; in those having a population of 7,000 and less than 10,000, he shall receive \$805.00 per annum; in those having a population of 10,000 and less than 12,000, he shall receive \$835.00 per annum; in those having a population of 12,000 and less than 15,000, he shall receive \$865.00 per annum; in those having a population of 15,000 and less than 25,000, he shall receive \$895.00 per annum; in those having a population of 25,000 and less than 36,000, he shall receive \$925.00 per annum; in those having a population of 36,000 or more, he shall receive \$955.00 per annum. The county superintendent of schools shall receive said compensation monthly from the county revenue fund in the form of a warrant drawn on the county treasury. The State of Missouri shall pay annually to each county of the third class \$600.00 pursuant to an appropriation out of moneys regularly appropriated and set aside for the support of the free public schools."

It will be observed that the act last referred to provides certain amounts to the county superintendent "as compensation" for his duties in the preparation of budgets. The amount is not designated as salary, but it is merely an amount per year. The act provides that he shall receive "said compensation" monthly from the county revenue fund. By Section 3 of the 1945 Act, the county superintendent is allowed additional compensation over that provided by Section 1 of said act to pay him for services as supervisor of school transportation.

It will, therefore, be seen that the county superintendent is entitled to the compensation provided by Sections 1 and 3 of the 1945 Act and also the compensation provided by S. B. 177 of the 64th General Assembly. The question to be determined is whether the compensation as supervisor of transportation and for services in preparing the school budgets are a part of the "annual salary" of the superintendent referred to in Section 2 of the 1945 act which provides for his expense account. We have heretofore ruled that the compensation as supervisor of transportation is to be considered as a part of the annual salary of the county superintendent for the purpose of setting the limit of the expense account of the superintendent.

Salary is defined as follows:

"Recompense, usually periodically, for services rendered." Webster's New Standard Dictionary

"A stipulated recompense for services rendered, usually fixed for one year and paid pro rata, at varying periods, as weekly, monthly, etc.; hire; wages." Webster's Twentieth Century Dictionary

From the foregoing definitions it appears that a salary is merely a stipulated compensation payable periodically. Annual salary would be one fixed by the year, although payable at different periods during the year. A monthly salary would be one fixed by the month. When, therefore, S. B. 177 provides a compensation per year it, in effect, provides an annual salary whether it denominates the compensation "salary" or merely "compensation". By said act the compensation for county superintendent for his duties in preparing the budgets for the various school districts is fixed at a stipulated sum per year, and it is provided that said sum shall be paid to him monthly. Said compensation is, therefore, an annual salary, payable monthly.

We think the following cases support the above conclusion:

In Kellogg v. Story County et al, 257 NW 778 (Iowa), the court was considering a statute regarding the salary of a county superintendent of schools. In the opinion the court said:

"It is provided by section 5232 of the code that each county superintendent of schools shall receive an annual salary of not less than \$1,800 per year and such additional compensation as may be allowed by the board of supervisors in each particular county.

The question is strictly one of statutory construction. It is true that both the words "salary" and "compensation" are used in section 5232. They are, it seems to the court, used without differentiation. The compensation to be awarded to the county superintendent is in the nature of salary, and any amount added by the board to the minimum provided by the statute must be treated as a part of such salary."

In Spokely v. Haaven, 237 NW 11 (Minn.), the court was considering a statute which limited campaign disbursements for county offices to a sum of not exceeding one-third of the salary to which such person would, if elected, be entitled during the first year of his incumbency in such office. Said statute further provided that if such person would not receive a salary, then the limit would be one-third of the compensation which his predecessor received during the first year of such predecessor's incumbency. The county officer involved in that case was a sheriff whose compensation was a salary plus certain fees, and the question was whether in determining the limit of campaign expenditures for that office both the salary and fees should be added together. The court, after quoting various definitions of "salary" and "compensation" said:

"We are of the opinion that the legislature intended to base its restriction on such disbursements, at least in a measure, in proportion to the gross official income. It seems apparent that it was the intention of the legislature to limit the authorized campaign expenses to one-third of the official income for the first year in office. Compensation was the controlling element. From a practical viewpoint and for the purpose

of the particular law there could be no reason for making a distinction between 'salary' and 'fees', and we hold that the word 'salary' used in this legislative enactment was used in its flexible broad sense of compensation including both 'salary' and 'fees'."

In *United BoxBoard and Paper Co. v. McEvan Bros. Co.* 76 A. 550, 554 (N.J.) the court said:

"I see no difference between salary paid for services and compensation rendered or allowed for services. Salary in its general sense is a compensation for services rendered by one to another, but because it may be stipulated for beforehand the word gives to the thing no dignity, force, or operation which is not included in the word 'compensation'."

When, therefore, the legislature by Section 2 of the 1945 Act used the words "annual salary", we think it meant the total annual compensation. This would include both the salary as provided by Section 1 of said act and the compensation provided for added duties by various other acts, including S. B. 177. The provisions as to expenses were evidently designed to reimburse the county superintendent for money expended by him in traveling while performing his duties. There would be no reason to assume that the legislature intended that the county superintendent should bear his own expenses while traveling in connection with a part of his duties but should be reimbursed for his expenses while traveling in the performance of other duties. We believe the provisions as to reimbursing him for his traveling expenses were designed to guarantee that the county superintendent should receive his compensation for his own use and that he would not be required to use any part of same for traveling expenses.

Conclusion

It is, therefore, the opinion of this office that the compensation provided for the county superintendent of schools by S. B. 177 of the 64th General Assembly for services in preparing the budgets for the various school districts is to be included as a part of the "annual salary" of the county superintendent for the purpose of calculating the maximum amount which he may be allowed for traveling expenses.

Yours very truly,

Harry H. Kay
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General

HHK/vlv