

COUNTY TREASURER: County court presumed to have taken increased compensation for county treasurer into consideration when it increased annual compensation.



February 1, 1955

Honorable Robert L. Lamar
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

"I have been asked by Mr. Walter Beeler, the County Treasurer of Texas County, for an opinion as to the additional compensation allowed him in connection with the collection of intangible personal property tax under House Bill 199 of the 66th General Assembly.

"The facts are as follows: Mr. Beeler served as County Treasurer from 1949 to 1952, being re-elected in the latter year for another term ending in 1957. Texas County is under township organization. During his first term, his salary as County Treasurer was fixed at \$1900.00 per year. No order by the County Court was entered on the Court record fixing the amount of such salary; however, in all budget estimates during the years of that first term, the item of 'salary' of the County Treasurer was included at that sum under that specific designation. After the passage of H.B. 199, the 'salary' of the County Treasurer was included in budget estimates at the sum of \$2,000.00. The additional compensation provided for by H. B. 199 was never entered in the County budgets under that designation.

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"During the years 1953 and '54 the same condition continued, the budgets including his 'salary' at \$2,000.00. The same thing is true of the 1955 budget now in preparation. Texas County is a 3rd class county, and it so happens that the 'salary' of \$2,000.00 exactly equals the minimum salary of \$1,200.00 permitted by law in a 3rd class county, plus the \$800.00 extra compensation for additional services provided for in H.B.199.

"Query: Is the County Treasurer of this County entitled to the \$800.00 extra compensation provided for in H.B. 199 over and above the \$2,000.00 'salary' specified in the budget estimates; or is the additional compensation to be included within and a part of such \$2,000.00 salary.

"I would very much appreciate it if you would give me an opinion on this matter, and trust that I have given you sufficient facts on which to base it."

As you have pointed out in your request, Texas County is a county of the third class under township organization. According to the 1950 census, its population was 18,992.

Section 54.320, RSMo 1949, as amended, Laws of Missouri, 1951, page 377, reads as follows:

"The county treasurer in counties of the third and fourth classes adopting township organization shall be allowed a salary of not less than one hundred dollars per month by the county court to be paid as at present provided by law; the ex officio collector for collecting and paying over the same shall be allowed a commission of three per cent on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and two per cent on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes; he shall receive nothing for paying over money to his successor in office."

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The only change made in this section by the 1951 amendment was the addition of the reference found therein to fourth class counties.

House Bill No. 199 of the 66th General Assembly, referred to in your opinion request, is found in Laws of Missouri, 1951, page 867. It imposed upon county treasurers certain additional duties in connection with the handling of intangible personal property tax returns. Section 3 of the act (Sec. 54.275, MoRS, 1953 Supp.) provided as follows:

"For the additional duties imposed upon county treasurers by section 2 of this act, they shall receive the following additional compensation, to be paid in the same manner and from the same funds as county treasurers are now paid provided said treasurers shall have used diligence in securing and preparing the additional list and shall have forwarded the same to the Director of Revenue.

"(1) In class four counties six hundred dollars per annum.

"(2) In class three counties having a population of less than twelve thousand five hundred, six hundred dollars per annum.

"(3) In class three counties having a population of more than twelve thousand five hundred but less than thirty thousand, eight hundred dollars.

"(4) In class three counties having a population of more than thirty thousand, one thousand dollars.

"(5) In class two counties, one thousand dollars.

"(6) In counties under charter form of government a compensation to be fixed by the County Council."

This act became effective on October 9, 1951.

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In our opinion, the county treasurer would be entitled to receive the proportionate amount of the \$800 therein provided for the period from the effective date of that bill until the end of 1951. The increase having been voted by the Legislature, it would be automatically included in the county budget. See *Gill v. Buchanan County*, 346 Mo. 599, 142 S.W. (2d) 665, 1.c. 668(6-8).

As to the subsequent years, however, we think a different conclusion must be reached. This conclusion is based upon the holding of the Missouri Supreme Court in the case of *Givens v. Daviess County*, 107 Mo. 603. That case involved the salary of the county treasurer under Section 5388, R.S. Mo. 1879. That statute authorized the county court to fix and allow the treasurer as compensation such salary as it should deem reasonable and just. In that case the court discussed the matter of the salary of the county treasurer under said statute as follows, 107 Mo. 1.c. 608:

"A public officer is not entitled to compensation by virtue of a contract, express or implied. The right to compensation exists, when it exists at all, as a creation of law, and as an incident to the office. * * * In the absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his duties enlarged without the impairment of any vested right. * * *

"Owing doubtless to great difference in the wealth and revenues of the various counties, the legislature has delegated to the county courts of their respective counties the duty of determining and fixing the compensation of county treasurers by section 5405, Revised Statutes, 1879, which 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.' Under this section, according to the principles above enunciated, the county court of defendant county had the undoubted

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right, at least within the limits of reasonableness and justice, to determine the compensation plaintiff should receive for his services as treasurer, and to diminish the same during the term, if in its judgment circumstances demanded a reduction. The action of the county court in previously fixing an annual salary of \$1,500 to this office, whether by merely paying that amount to former incumbents, or by general order, had the effect of attaching to the office of treasurer of that county, and as an incident thereto, a salary of \$1,500 per year. When plaintiff was elected to the office, for the second time, he took, as incident thereto, the right to receive this salary.

"He was entitled to receive the salary as previously fixed, from the time he entered upon the duties of his office, until the expiration of the term unless it was decreased by appropriate action of the county court and he was duly notified of the change.

"As has been seen this right does not rest upon contract, but upon the law, the statute and the action of the county court. As is said in Fitzsimmons v. Brooklyn, *supra*, 'the salary belongs to him as an incident to his office, and so long as he holds it; and, when improperly withheld, he may sue for and recover it. When he does so he is entitled to its full amount, not by force of any contract, but because the law attaches it to the office.'

"The salary to which plaintiff was entitled did not depend, in the least, upon the value of his services, but altogether upon what action the court took in the premises. Every day he held the office the law vested in him a right to a due proportion of the salary, as at that time fixed, and, consequently, an order changing the compensation could not have a retrospective operation and divest from him what was his already. Hence, when the order of December 6 was made, plaintiff

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had the undoubted right to demand and collect, as salary, at the rate of \$1,500 per year from the commencement of his term, January 24, 1885, to that date.

"We do not think the order had the effect of accomplishing a change in the salary for services subsequent to its date for the reason that the terms used, 'in full of all demands as such treasurer,' does not express such an intention. Those terms imply rather that this payment was in full of salary to that date, but as such a construction would increase the salary, which could not be done under the constitution, (art. 14, sec. 8,) we must infer that it was only intended to cover the salary for two years, leaving the additional period for future adjustment.

"Again, we do not think the existing salary could have been detached from the office without notice to the officer. While the court had the right to decrease the compensation plaintiff had the right, which appears to have been his only remedy, to resign the office if dissatisfied with the change.

"It would have been the greatest injustice to have reduced the salary without notice, and held plaintiff to the reduction. The salary was the most important incident attached to the office, and it should only have been changed by clear and definite action on the part of the county court, and not by implication merely. For these reasons we think the order of the county court insufficient to accomplish a change in the salary."

In applying the principles of the opinion of the court in that case to the present situation, it appears to us that, had the county court made no further order or change in the compensation of the county treasurer subsequent to the effective date of House Bill No. 199 of the 66th General Assembly, the presumption would have arisen that the county court intended to continue the compensation under Section 54.320 at the same rate as it had previously fixed. However, the court did not do so and instead increased the compensation from \$1,900 to \$2,000.

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As the court pointed out in the Givens case, the constitutional prohibition against the increase in compensation of a county officer during his term (Sec. 13, Art. VII, Missouri Constitution, 1945) would have been violated by the increase in the compensation of the treasurer under Section 54.320 by the county court. See 67 C.J.S., Officers, Section 95, page 342. Inasmuch as such an outright increase would have been contrary to the constitutional provision, we think that the presumption must arise that in changing the compensation of the treasurer from \$1,900 to \$2,000 the county court must have taken into consideration the fact that an increase in his compensation would have been authorized by House Bill No. 199 of the 66th General Assembly. Inasmuch as that act imposed additional duties upon the county treasurer, an increase in his compensation for the performance of such services would not violate the constitutional prohibition above referred to.

Therefore, in the absence of any other circumstances beyond those set forth in your letter, we think that it must be presumed that the county court in changing the compensation of the treasurer after the passage of House Bill No. 199 must have intended to have fixed his compensation under Section 54.320 at \$100 per month and to have provided the \$800 annual additional compensation authorized by House Bill No. 199 of the 66th General Assembly. In this connection it might be pointed out that the courts of this state have held that under a statute which authorizes a body to fix the compensation of a public officer at a certain amount and further specifies a minimum salary where the body fixes no other salary, the officer is entitled to the minimum provided by statute. State ex rel. Walter v. Johnson, 351 Mo. 293, 173 S.W. (2d) 411, 1.c. 414; State ex rel. Koehler v. Bulger, 289 Mo. 441, 233 S.W. 486, 1.c. 489.

This conclusion is based solely on the facts submitted in your opinion request. We do not hold that this result must necessarily follow if there are other facts and circumstances to be gleaned from the budget applications of the county treasurer during the period in question and the deliberations and actions of the county court in passing upon the budget applications of the county treasurer. There might be circumstances which would overcome the presumption which we feel the law requires on the basis of the facts outlined by you.

CONCLUSION

Therefore, it is the opinion of this office that in a county of the third class under township organization where the county

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treasurer's salary had been fixed at \$1,900 per year, and, subsequent to the effective date of House Bill No. 199 of the 66th General Assembly, was increased during the term of the incumbent to \$2,000 per year, without any breakdown of the amount allowed under Section 54.320, MORS, and said House Bill No. 199, the presumption arises that the county court intended to allow the county treasurer compensation at the rate of \$1,200 per annum under Section 54.320 and \$800 per annum under House Bill No. 199 of the 66th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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