

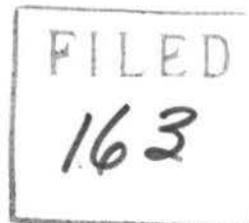
COMPENSATION:
COUNTY TREASURER:

The county treasurer of a county which became a second class county January 1, 1967, said treasurer having been appointed by the Governor in 1971 to serve until a duly elected county treasurer can be installed on January 1, 1973, pursuant to Section 54.010, sub. 2, RSMo 1969, is filling out an unexpired term of office and, as such, is entitled to receive only the compensation provided by law for the treasurer of a second class county who was elected at the November 1968 election.

OPINION NO. 163

April 1, 1971

Honorable Daniel M. Buescher
Prosecuting Attorney
Franklin County Court House
Union, Missouri 63084



Dear Mr. Buescher:

This is in response to your request for an opinion concerning the problem of the compensation due a county treasurer appointed by the Governor to a two year term in a new second class county prior to the first election for a county treasurer in such a county.

It is our understanding that Franklin County became a second class county on January 1, 1967. No election has been held to fill the vacancy of county treasurer in this new second class county. The county treasurer, who was elected at the general election in November 1966, when Franklin County was still a third class county, served in that capacity until December 31, 1970, at which time his term of office expired. The Governor appointed a county treasurer for Franklin County to serve a two year period beginning January 1, 1971 and ending December 31, 1972. On January 1, 1973, the first duly elected county treasurer in this new second class county will take office.

Enclosed is a copy of Opinion No. 34, issued January 9, 1970, to the Honorable George W. Parker, State Representative, in which we discussed the problem arising when a county changes from a third class to a second class county. We noted that Section 54.010, sub. 2, RSMo 1969, only provides for an election for a county treasurer in a second class county every four years with the next one to be held in November, 1972. Therefore, noting the provisions of Section 105.030, RSMo 1969, we concluded that any vacancy arising in this office prior to that time should be filled by a Governor's appointment.

In State on inf. Taylor v. Kiburz, 208 S.W.2d 285 (Mo. en banc 1947), the Missouri Supreme Court held that a vacancy arises as a

Honorable Daniel M. Buescher

matter of course when a new office is created. Since the Governor is empowered to fill vacancies in office, his appointee, upon assumption of the duties of the office, is entitled to receive the compensation provided for such office by law. Section 54.250, RSMo 1969, provides that a county treasurer in a second class county shall receive an annual salary of \$11,000 for his services. In addition, Section 54.275, RSMo 1969, provides an additional compensation of \$1,000 for the county treasurer in class two counties.

However, the current salary level was set by the legislature in the 1969 session. Prior to this time, county treasurers in second class counties received an annual salary of \$8,000 pursuant to Sections 54.250, 54.255, and 54.275. See Laws 1969, page ____, H.B. 374.

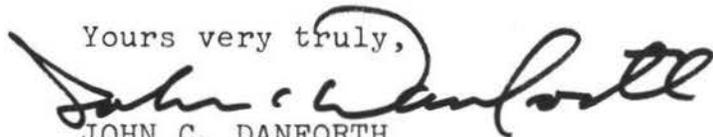
Enclosed is a copy of Opinion No. 62, issued June 30, 1961, to the Honorable William B. Milfelt, in which we held that a county auditor in a second class county, appointed by the Governor after the county had become a county of second class, was not entitled to the salary increase provided by statute enacted prior to his appointment because, in reality, such individual was filling out an unexpired term of office which began before the salary increase was adopted. This was true even though such county was not entitled to an auditor as of the preceding election date for county auditors inasmuch as it was not then a county of the second class. Following the reasoning of that opinion, we now conclude that the County Treasurer of Franklin County is entitled to receive only that compensation provided for the office of county treasurer in a second class county by law on January 1, 1969, the date upon which the current term of office of second class county treasurers commenced.

CONCLUSION

It is the opinion of this office that the county treasurer of a county which became a second class county January 1, 1967, said treasurer having been appointed by the Governor in 1971 to serve until a duly elected county treasurer can be installed on January 1, 1973, pursuant to Section 54.010, sub. 2, RSMo 1969, is filling out an unexpired term of office and, as such, is entitled to receive only the compensation provided by law for the treasurer of a second class county who was elected at the November 1968 election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 62
6-30-61, Milfelt

Op. No. 34
1-9-70, Parker