

COUNTY TREASURERS - Meaning of "just and reasonable" compensation.

April 4th, 1935



Honorable Homer G. Chaffin
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Mr. Chaffin:

We have your request of March 8, 1935
for an opinion upon the following:

"I am writing to you for an opinion
upon the following matter:

"H. A. Stone was elected county
treasurer in this county at the general
election in 1932. He entered upon the
duties of that office January 1, 1933.
The county court then, under Section
12138, R. S. Mo. 1929, fixed his salary
at \$125.00 per month, which had been
the salary paid to county treasurers
in this county for a long period of
years.

"At the February term of the county
court, the county court reduced this
compensation to \$75.00 per month, a
copy of which order reducing it is
attached hereto.

"I should appreciate your opinion as
to the validity of the reduction order,
and a ruling as to the proper compensa-
tion to be paid to the county treasurer."

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Prior to the 1933 session of the Legislature, the compensation of county treasurers was provided for under Article 8, Chapter 85, R. S. Mo. 1929. The 1933 Legislature, Laws Mo. 1933, p. 338, passed what is sometimes termed the consolidation act, whereby the offices of county treasurer and county collector, in counties of less than 40,000 population were consolidated; said consolidation to take effect at the expiration of the present term of county treasurers, to-wit, January, 1937. We find that the county treasurer of your county, under and pursuant to Section 12130, R. S. Mo. 1929, was elected at the 1932 general election for a term of four years.

The only statute, applicable, authorizing the county court to fix the compensation of the county treasurer in your county, is Section 12138, R. S. Mo. 1929, which provides:

"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 the above statute, the county court is not vested with unlimited powers, but said statute, like all others, calls for reasonable, as distinguished from arbitrary, action on the part of the county court.

It is now necessary to decide what the Legislature meant by the peculiar wording of the above statute. The phraseology "as may be deemed just and reasonable" in the above statute cannot be overlooked in its construction. We are not given the liberty to cut out parts of the statute, but must give effect to every word and clause in the statute. *Castilo v. State Highway Commission*, 279 S. W. 673.

Webster's Dictionary defines "just" as:

"violating no right or obligation; giving to every man his due;"

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and the same author defines "reasonable" as:

"governed by reason; agreeable to reason, just;"

When the important office of county treasurer was created by legislative enactment, it was created with the full knowledge of the heavy responsibility of looking after and sacredly preserving intact the public moneys, or trust funds, placed in the hands of one public official for safekeeping. To obtain competent public officials for such burdensome duties, it was the intention of the Legislature that adequate compensation would be a prerequisite to obtaining such services, and the spirit underlying the action of the Legislature was that county courts could fix a salary for the county treasurer, taking into consideration the type of official desired, cost of living, and the general price trend of the times, so that the salary when so fixed would meet the wishes of the Legislature to be just and reasonable.

In State ex rel. v. Carr, 178 Mo. 229, l.c. 233, the Supreme Court of this State said:

"It is one of the cardinal rules for the construction of statutes, that the spirit and purpose of the enactment is an invaluable guide to the meaning thereof, for the letter of the law often killeth, while its spirit maketh alive."

It is to be judicially noted, a fact which is known to all mankind, that since the election of Mr. Stone as county treasurer, the cost of living, and the price trend of commodities in general has been upward. In fact, more money is required today to meet the ordinary living expenses of any individual than was required at the time of your county treasurer's election. It would therefore appear, in the light of increasing prices and cost of living, that any alteration or change in the salary

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of the county treasurer, in order to meet the mandatory requirements of the statute that it be "just and reasonable" compensation, would be upward instead of downward.

It cannot be successfully contended that a public judicial body, such as the county court, has unlimited power to do that which may be arbitrary and unreasonable. To so interpret the above statute with reference to the powers of the county court, would bring us within the condemnation of the Supreme Court of this State in Shohoney v. Railroad Co. 231 Mo. 131, l.c. 156, when it said:

"The words of the statute would be without life, mere sound and fury signifying nothing -- the mischiefs would abide, the remedy be lost -- "

In the preparation of this opinion, we have kept constantly before us the words of Woodson, J., in State ex rel. v. Insurance Company, 224 Mo. 84, l.c. 92:

"The prime effort of all judicial interpretation is to ascertain what the Legislature really intended: in using the particular language."

From your request, it appears that the present county treasurer has served more than half his term at the salary of \$125.00 per month, which has been paid almost from time immemorial in your county. It is to be gathered from Givens v. Daviess County, 107 Mo. 603, that the salary of the county treasurer in substance was an annual salary of \$1500.00 per year, which was an incident of the office at the time of his election for more than one-half of his term, and which he, as such officer, was entitled to receive. The declaration by the Supreme Court that the county treasurer's salary is an annual salary, which cannot be split up into periods at any time a county court may so choose to act, is binding upon us.

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In State ex rel. Harvey v. Linville, 300 S. W. 366, the Supreme Court, speaking of annual salaries, used this language:

"We conclude further that 'annual' as applied to salaries, means not the calendar years, but the years of the incumbent's term."

In giving to the language "just and reasonable", as used by the Legislature, its true and perfect interpretation, we may consult the statutes with reference to other officers, wherein the Legislature itself fixed the salaries of other county officials at such figures which the Legislature itself believed to be just and reasonable. Your county contains a population of 16,148, according to the United States decennial census of 1930. The Legislature, in your county, has fixed what it believed to be a just and reasonable compensation for the circuit clerk at \$1700.00 per year, Laws Mo. 1933, p. 369; for the county clerk the sum of \$1700.00 per year, with the additional sum of \$1600.00 per year for deputy hire; and "just and reasonable" compensation for the county superintendent of schools is \$1800.00 per year, Laws Mo. 1933, p. 384. Thus, the Legislature itself has outlined with reference to other county offices in your county, what would appear to be just and reasonable compensation.

CONCLUSION

This office is of the opinion that the attempted reduction order of the county court, reducing the salary of the county treasurer from \$125.00 per month to \$75.00 per month is invalid; that "just and reasonable compensation" for the county treasurer in your county would be a minimum of \$125.00 per month.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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