OFFICERS: Assignment of future unearned compensation by county officer is null and void. County court is legally unauthorized to advance unearned compensation to assessor and before settlement made with court.

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April 7, 1955

Honorable George Q. Dawes
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Mr. Dawes:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads in part as follows:

"* * * * * * * * * * * * * * * * * * *

"The first question is: May a county officer who receives his compensation only once a year make a valid assignment of future or unearned compensation after he has embarked upon his duties? It is my understanding of the law that an assignment of future wages of a public officer is against public policy and void.

"The second question is: Does the county court have the authority to advance part of a county assessor's compensation before settlement?

"The county assessor has asked the court for an advance payment of $200.00 to $300.00 on his compensation which will not be due him until June. The assessor has performed some of his duties but not all. It has been the practice in the past to make such advances but I have advised against it pending your opinion."

As it will be seen from the first inquiry, the principle of law involved is in regard to whether or not future unearned compensation of a public officer can be validly assigned. The general rule is that one who does not have an existing contract of employment cannot assign future unearned profits or wages, and said rule has been given in Vol. 6, C.J.S. pp. 1067 and 1068, and reads as follows:

> "As a general rule an assignment of profits, earnings, or wages to be earned in the future is void if, at the time of the assignment, there is no existing contract or employment under which such profits, earnings, or wages are to accrue, except to the extent that such an assignment may be authorized by statute. Under the general rule, an assignment cannot be made of a book account which as yet has no potential existence.
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> "An assignment of wages or earnings not founded on an existing contract, is void as tending to subject wage-earners to harsh and unreasonable conditions of servitude, and as being against public policy; and on the ground that such future earnings or wages having no actual or potential existence at the time of the assignment constitute a mere possibility not coupled with an interest; and has also been held to be void on the ground that the assignment is too vague and uncertain to be sustained as a transfer of property."

The same general rule is also applicable and will prevent a public officer from assigning the unearned salary, wages, or fees of his office. This general rule has also been given in Vol. 6, C.J.S., pp. 1068, 1069, and reads as follows:

> "Although there are some decisions to the contrary it is a well settled general rule that an assignment by a public officer of the unearned salary, wages, or fees of his office is void as against public policy, even though they are falsely represented to be earned; and a collection under such an assignment is ineffectual as to such officer, and leaves the salary or fees still due so far as he is concerned. The general rule is especially applicable where, as in some jurisdictions, the rule, with some qualifications, is embodied in statutes restricting and regulating the assignment of unearned wages and salaries, which statutes have been held valid as a proper exercise of the police power. The general rule is not changed by a statute making unearned salary or fees subject to garnishment. An assignment of both earned and unearned salary or fees is deemed severable, and is valid as to so much as has been earned at the time of the assignment."

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Section 432.030 RSMo 1949, permits the assignment of wages, salaries and earnings in the manner prescribed as to such compensation already earned, but declares that the assignment of wages, salaries, and earnings not earned at the time of making the assignment, shall be null and void. Such section reads as follows:

> "All assignments of wages, salaries or earnings must be in writing with the correct date of the assignment and the amount assigned and the name or names of the party or parties owing the wages, salaries and earnings so assigned; and all assignments of wages, salaries and earnings, not earned at the time the assignment is made, shall be null and void."

While the last section does not specifically refer to the assignment of unearned compensation of public officers, it is believed that its provisions are broad enough to include such assignment, and does make the assignment of unearned compensation of public officers invalid. This section and particularly the last portion of same, which we have underscored, has been upon the statute books since 1911 (L.Mo. 1911, p. 143). This law has been attacked upon various grounds, upon numerous occasions, but its constitutionality has always been upheld. Illustrative of this fact is the case of Heller v. Lutz, 254 Mo. 704. From the facts involved in this case, it appears that both appellants and respondents were separately engaged in the mercantile business in the City of St. Louis, Missouri, and that one Patrick Hannigan was in the employ of respondents. He owed a prior debt to appellant, and upon August 16, 1911, he executed a written assignment of all wages due or to become due him from respondents within the next six months' period from the date of the assignment, although no wages were due him upon the date of said assignment. Appellants notified respondents of the assignment, which notice was returned with a statement to the effect that the notice would be ignored by them, as such assignment was in violation of the statute prohibiting assignment of unearned wages, and that Hannigan had been paid the wages due him. Appellants then sued respondents to recover the amount of Hannigan's debt to them. The case was tried upon an agreed statement of facts, substantially the same as that set forth above, and the court rendered judgment for the defendants from which plaintiffs appealed.

Some interesting questions were raised in the motion for new trial, and which were properlyPreserved for review

of the Supreme Court, and finally passed upon by that court, among which are: Notice of assignment; is the assignment a property right? does the assignment create a chose in action? constitutionality of the statute.

The first three questions were decided in the negative, while the last one was decided in the affirmative.

Insofar as our present discussion is concerned, we believe it unnecessary to give the legal reasons the court had for deciding each question, except the fourth which is believed to be pertinent to our present discussion. Therefore, excerpts from the court's opinion regarding said question will be given. At l. c. 713, 714 and 718, the court said:

> "IV. Constitutionality of Statute. The part of the statute contended by the appellants to be invalid, is as follows: 'All assignments of wages, salaries and earnings not earned at the time the assignment is made, shall be null and void.'
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> "The presumptions are always in favor of the constitutionality of a statute; and it will not be declared invalid unless its contravention of the Constitution is so manifest as to leave no room for reasonable doubt.
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> "* *
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> "The exercise of the police power as evidenced by various phases of legislation affecting individual liberty or personal rights, has met with judicial approval in many cases, the rule to be deduced therefrom being that in civilized society there is no such thing as an unrestrained power on the part of the individual to contract, this right being subject to wise and beneficial police regulations; and when an act which may prove detrimental to the public welfare is prohibited by a general statute, it will be upheld unless it is clearly in violation of some provisions of the organic law. (Grimes v. Eddy, 126 Mo. 168, 26 L.R.A. 638; State ex inf. Firemen's Fund Ins. Co., 152 Mo. 1, 45 L.R.A. 363; Karnes v. A.M.F. Ins. Co., 144 Mo. 413; Morrison v. Morey, 146 Mo. 543.)"
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> " *

> "In view of these facts, even if it be conceded that an assignment of unearned wages is a property right, to our mind a palpable absurdity, or that it is a chose in action, although it has no potential existence, the validity of the statute should be upheld on the ground that its enactment is a wholesome exercise of the police power."

Again, in the case of The State v. Williamson, 118 Mo. 146, it was held that the contract by a public officer, for the sale and collection of his unearned salary, is against public policy and void. This was a criminal case in which the defendant was tried and convicted of embezzling $107.00. He was a mail carrier in the Kansas City post office and received a salary of $107.00 per month. He executed a written assignment on November 30, 1892, of the salary of $100.00 he would receive for the month of December that year, to Mullholland, and also appointed Mullholland his agent and gave him an order to the postmaster for that sum. He also sold his salary to other parties, but when it became due collected it from the government and refused to pay it over to Mullholland. After conviction, the defendant timely appealed to the Supreme Court, and the Court, in discussing the facts and legal principles involved, said at l.c. 150, 151 and 152:

> "The vital question in this case and the one upon which this prosecution and conviction must stand or fall is as to the validity of the contract between the defendants and Mullholland. If the contract was void because against public policy, then the defendant must be discharged, not being guilty of any criminal offense under the statute.
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> " *
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> "The reason of the rule is that the public service may not be so good and efficient when the unearned salary has been assigned as when it has not been, and 'that the public service is protected by protecting those engaged in the performance of public duties,' and this, not upon the ground of their private and individual interest, but that of the necessity of securing the efficiency of the public service by seeing to it that the funds provided for its maintenance should be received by those who are to perform the work at such periods as the law has appointed for their payment. Bliss v. Lawrence, supra.

> "If an officer can assign this unearned salary for a month, he can, of course, assign it for a year, or longer, and it will hardly be contended in such case that he would be as efficient and diligent as if he were to receive his salary in person or for his own benefit as it became due. For these reasons we think the contract for the sale and collection of the unearned salary of defendant void and of no effect, being against public policy."

In view of the foregoing, and in answer to the first inquiry of the opinion request, it is our thought that any assignment by a county officer of his future unearned compensation is null and void. This is true, regardless of whether the compensation is paid in the form of a salary or fees at the end of each year, or any other fixed period of time.

The second question is whether or not the county court has authority to advance part of a county assessor's compensation before settlement. The general rule is that a public officer is not entitled to any compensation until he has performed the services, which, we believe, applies in the present instance, and that such rule should be considered along with the applicable statutes in ascertaining the correct answer to this inquiry. Said general rule is stated in Vol. 67, C.J.S., pp. 319, 320, and reads as follows:

> "As respects compensation, an office is taken cum onere, and public officers have no claim for official services rendered except where, and to the extent that compensation is provided by law. The duties of a public officer may be exacted without specific compensation, and, when no compensation is provided, the rendition of services is deemed to be gratuitous. A public officer has no rights of any sort to compensation for his services before he has earned it, even if prevented from performing such services by legislative action."

In view of the fact that the second inquiry refers to an "advance" of part of the assessor's compensation "before settlement," we assume that the question was intended to refer only to the fees provided by Section 53.140 MoRS Cum. Supp. 1953, since the correct amount of fees due under provisions of this section could not be determined and paid until after settlement with the county court of a fourth class county.

Therefore, our discussion and answer to the second inquiry will be strictly limited to the payment of the assessor's fees provided by said Section 53.140.

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Your county of Iron is one of class four, consequently the compensation of the assessor will be paid in accordance with the provisions of Section 53.140, MoRS Cum.Supp. 1953, reading as follows:

> "The compensation of the county assessor in counties of the fourth class shall be sixty cents per list, and each county assessor shall be allowed a fee of six cents per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person to be counted as one name, one half of which shall be paid out of the county treasury and the other one half out of the state treasury. The assessor in counties of the fourth class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book; provided, that nothing contained in this section shall be so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list."

The assessor's claim for one-half the compensation allowed by Section 53.140, supra, against the county should be presented to the county court by the same method as other claims against the county, in order that it might be audited, adjusted and settled in the manner provided by Section 50.160 RSMo 1949, reading as follows:

> "The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said court may issue process directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to said court, which process shall be served by

> the sheriff; and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, and if any person, being served with such process shall not appear according to the command thereof, without reasonable cause, or if any person in attendance at any hearing or proceeding shall, without reasonable cause, refuse to be sworn or to be examined, or to answer a question or to produce a book or paper, or to subscribe or swear to his deposition, he shall be deemed guilty of a misdemeanor; provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

Unfortunately we have no Missouri statutes or court decisions construing the terms "audit, adjust and settle" as used in Section 50.160, supra. From the language used therein it does not appear that the legislative intent was that such words should be given any special or technical meaning, or that they should be given any other than their plain or ordinary meaning; hence we have assumed that they were intended to be used in their ordinary sense.

In the case of New York Catholic Protectory v. Rockland County, 144 N.Y.S. 552, the meaning of the term "to audit" was given at l. c. 556, where the court said:

> "* * * To 'audit' is to hear, to examine an account and in its broader sense, it includes its adjustment or allowance, disallowance, or rejection. People ex rel. Brown v. Board of Appt., 52 N.Y. 227. * * *"

In view of the common or ordinary meaning of the terms used in Section 50.160, supra, when the assessor's claim for compensation is presented, it is the duty of the county court to examine such claim, to satisfy itself as to the correctness of the statements made, and then to allow, or disallow the claim in whole or in part and order a warrant drawn upon the county treasurer in any sum found due the assessor. When the county court passes upon the correctness of the claim against the county, under the provisions of this section, it must be remembered that the county court is a court of limited jurisdiction, that it has authority to act only as the fiscal agent of the county, and has no powers in that particular other than those provided by this or other applicable sections of the statute.

In discussing the powers of the county court in the case of

Missouri Electric Power Co. v. City of Mountain Grove, 176 S.W. (2) 612, at l.c. 615 the court said:

> "The authorities are uniform to the effect that county courts possess only limited jurisdiction. Outside the management of the fiscal affairs of the county, such courts possess no powers except those conferred by statute. * * * *"

Section 137.245 RSMo 1949, requires the assessor to make out and return a copy of the assessor's books to the county court, and reads as follows:

> "1. The assessor, except in St. Louis city, shall make out and return to the county court, on or before the thirty-first day of May in every year, a fair copy of the assessor's book, verified by his affidavit annexed thereto, in the following words, to wit:
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> "_____, being duly sworn, makes oath and says that he has made diligent efforts to ascertain all taxable property being or situate, on the first day of January last past, in the county of which he is assessor; that, so far as he has been able to ascertain the same, it is correctly set forth in the foregoing book, in the manner and the value thereof stated therein, according to the mode required by law.
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> "2. The clerk of the county court shall immediately make out an abstract of the assessment book, showing aggregate footings of the different columns, so as to set forth the aggregate amounts of the different kinds of real and tangible personal property and the valuation thereof, and forward the same to the state tax commission. Upon failure to make out and forward such abstract to the state tax commission on or before the twentieth day of June, the clerk shall, upon conviction be deemed guilty of a misdemeanor."

From the contents shown in the assessor's books, filed as provided by Section 137.245, the county court is enabled to determine the amount of compensation due the assessor for his services at the rates provided by Section 50.160, supra. Until

the assessor's book has been completed the assessor would not be entitled to receive any fees, nor would the county be liable to pay anything, nor could it be determined the amount of compensation due the assessor. None of the statutes quoted above, and particularly Section 50.160, supra, authorize the county court to pay the assessor in advance, or for services to be performed at some later date. Said section prescribes the method by which the county court shall pay the assessor, and it is our contention that the court would have no authority to pay the assessor in any other manner or by any other method than those prescribed by the statutes. In support of our contention, we call attention to the cases of State v. Montgomery, 186 S.W. (2d) 553, and Nodaway County v. Kidder, 344 Mo. 795.

In State v. Montgomery, one, Moser, had been declared insane under a statute authorizing a county court to have jurisdiction of sanity hearings. Subsequently a proceeding to have Moser's sanity restored was instituted before the same county court which had adjudged him insane. The county court dismissed the petition, for the reason that it believed it had no jurisdiction of the matter. The circuit court, to which the case was later appealed, ordered the county court to enter judgment discharging Moser. From the circuit court judgment the judges of the county court appealed. In discussing the lack of jurisdiction in the county court to proceed in restoration of sanity hearings, the Kansas City Court of Appeals said at l. c. 556:

> "There being no statute authorizing the county court to conduct such a hearing as was requested in this case, and there being no statute from which we can reasonably say such authority may be implied, and the county court not having any common law jurisdiction, even if the common law would supply any relief to the petitioner, we reluctantly conclude that the county court had no jurisdiction in this matter and properly dismissed the petition. * * * *"

The county court has the power to issue a warrant to the assessor for the compensation for performance of his official duties in making the assessment books, only in accordance with the statutes quoted above.

None of said statutes, nor do any others, authorize the county court to compensate the assessor, or to give him an advancement

of compensation for services to be performed in the future. Said sections prescribe a particular procedure which must be followed in such instances, and the county court is without legal authority to compensate the assessor in any other manner.

Therefore, in answer to the second inquiry, it is our thought that the county court is legally unauthorized to advance any part of a county assessor's compensation not earned and before settlement.

CONCLUSION

It is, therefore, the opinion of this department that: (1) any assignment by a county officer of his future unearned compensation is null and void; and (2) a county court is legally unauthorized to advance any part of a county assessor's unearned compensation and before settlement with said court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
ATTORNEY GENERAL

PNC/ld/ma