

OFFICERS:  
SALARIES AND FEES:  
TREASURER OF THE  
CITY OF ST. LOUIS:

The salary of the Treasurer of the City of St. Louis is fixed by Laws of Missouri, 1939, page 486, and was payable in accordance therewith when that act went into effect.

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December 16, 1939

Honorable John J. Dwyer, Treasurer  
City of St. Louis  
St. Louis, Missouri

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Dear Sir:

This is in reply to your request of recent date wherein you request an opinion from this department on the question of whether or not you are entitled to the salary as city treasurer as is provided by Laws of Missouri, 1939, page 486, or whether or not you shall be paid the compensation which was being paid at the time you were elected.

The General Assembly in 1939, by an act found at page 486, Laws of Missouri, 1939, passed an act especially applicable to cities in the class of the City of St. Louis pertaining to the city treasurer, his bond, duties, salary, deputies and with an emergency clause. Sections 1, 3, 4 and 7 of the act, which are pertinent to the question which you have submitted, are as follows:

"In all cities in this state now or hereafter having six hundred thousand inhabitants or more, and in all cities in this state not within a county, but constituting both a political subdivision and a city in its corporate capacity, the city treasurer shall be commissioned by the mayor, and shall serve for the term or period in such commission fixed and thereafter until his successor is duly elected or appointed and qualified. In the event of a vacancy in the office of city treasurer, arising from any cause, such vacancy shall be filled by appointment by the

mayor, and the city treasurer so appointed shall serve until the first Monday in January next following the date of the election of his successor, and thereafter until his successor is qualified."

"Sec. 3. The city treasurer shall perform such duties as are, or may be, required of him by the general laws of this state, and such duties as are, or may be, required of him by any ordinance or ordinances of any such city not inconsistent, or in conflict with any such general law.

"Sec. 4. The salary of the city treasurer shall be Eight Thousand Dollars per annum. The salary of the city treasurer, and the salaries of his deputies, clerks, and assistants, shall be paid out of the city treasury, in equal semi-monthly installments.

"Sec. 7. There being no adequate law in this state applying to the election or appointment of and defining the duties of the city treasurer, providing for the appointment of his deputies, assistants, and clerks, and fixing their salaries and the manner of payment thereof, an emergency is declared to exist within the meaning of the Constitution, therefore this act shall take effect and be in force on and after it is approved by the Governor."

If you are correct in your contentions, your salary should be Eight Thousand Dollars per annum from and after the date the law went into effect which was May 22, 1939.

Honorable John J. Dwyer

(3)

December 16, 1939

From the briefs which have been submitted by you and by the city, it appears that the only obstacle in your way of receiving this salary is Section 8 of Article XIV of the Constitution of Missouri which provides as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

If new duties are added to an officer and compensation is paid therefor, then he may draw compensation for such duties and not be violating the provisions of the foregoing section of the Constitution. This statement is supported by a number of cases, among which are State ex rel. v. Walker, 97 Mo. 162 and State ex rel. v. Sheehan, 269 Mo. 421.

The briefs which have been submitted by you and by the city treat the question of whether or not new duties have been added to your office. We note from the memorandum brief, which you have submitted, that you cite certain provisions of the charter and city ordinances which require you to perform duties for the city which are duties in addition to those which the ordinary county treasurer performs under the old county treasurer's act. Since under the Act of 1939, the Treasurer of the City of St. Louis is not required to perform any more duties than he was under the old act, we do not think that you could draw the additional compensation on the ground that you have new duties imposed upon you. On that point we think that the

Honorable John J. Dwyer

(4)

December 16, 1939

position that the city has taken in this matter is correct.

Another point which you have suggested in your memorandum is that the salary must be a fixed compensation, that is, the salary which is supposed to be raised by the new act must have been one that is fixed at a certain amount.

In Volume 46 Corpus Juris, page 1024 at Section 259, the rule is announced as follows:

"If the prohibition is as to 'salary,' it does not affect one whose compensation is not definite and fixed, but is uncertain in amount and consists in fees or percentages. Where, however, the term 'emoluments' or 'compensation' is used, the limitation is wider in its effect, embracing all kinds of compensation such as fees, and per diem allowances, but not the privilege of appointing deputies. A prohibition against increasing or decreasing fees, percentages, or allowances of public officers during the term for which such officers are elected applies only to those irregular and uncertain modes of compensating public servants indicated by the words 'fees, percentages, or allowances,' and by terms of like meaning, and does not apply to the salaries of officers."

We think this same principle is followed in State ex rel. v. Gordon, 238 Mo. 168, wherein the Supreme Court held that the constitutional provision did not apply to the officer whose term was not fixed by the statute. For the same reason the constitutional provision against increase of salary during the term of office would not apply to the officer whose salary is not fixed. This

principle is also followed in *State ex rel. Dietrich v. Daues et al.*, Judges, 287 S. W. 430, 431, wherein the court said:

"It requires no citation of authority to show that the power to prescribe a salary as an incident to a public office is purely legislative in character. That power, as respects the office of county treasurer, the Legislature has delegated to the county court, the agency most familiar with the fiscal affairs and financial condition of the county, as well as the services required to be performed by the treasurer-- which may vary in different counties and at different times in the same county. The only limitation upon the power is that the compensation allowed thereunder be such as may be deemed just and reasonable. What is just and reasonable in a given case is committed to the discretion of the county court and to it only. Its action in the exercise of that discretion is not subject to judicial review, for the simple reason that neither the statute which confers the discretion nor any other makes it so."

Prior to the ruling of the Supreme Court in *State ex rel. McKittrick v. Dwyer*, 124 S. W. (2d) 1173, it seems that the City of St. Louis took the position that the city treasurer was an appointive office appointed by the Mayor of the City under the provisions of Section 1 of Article VIII of the Charter of the City of St. Louis, found at page 1282 of the Revised Code of 1926. In addition to that provision of the charter by Section 24 of Article XV of the charter the salary of the city treasurer was fixed at Five Thousand Dollars per annum and his bond was fixed and his duties were set out in that section.

From your letter it also appears that by an ordinance in 1931 the municipal assembly fixed the salary of the city treasurer at Five Thousand Dollars per annum. It seems that all of these sections were adopted and passed under the belief that the office of the City Treasurer of the City of St. Louis was an appointive officer of the city. However, under the State ex rel. McKittrick v. Dwyer case, supra, the Supreme Court has held that that office is an elective office the same as the county treasurer under the general law pertaining to county treasurers in the state.

Since the salary of the treasurer which has heretofore been fixed by the charter and municipal assembly under the impression that the treasurer was an appointive officer of the mayor, there may be some question of whether or not that salary could be considered as the salary fixed for the person who was elected under the general county treasurer's act. In connection with this statement, we have in mind a rule stated in 46 Corpus Juris, page 1025, Section 262, which provides in part as follows:

"A constitutional or statutory provision prohibiting a change of compensation after an election or appointment during the term of an officer does not apply where, prior to such time, no salary or compensation has been fixed for the office. So a statute fixing the salary of an officer does not increase the salary during the term, where the law fixing the compensation at the time of election was invalid. \* \* \* \* \*

In connection with this question, we note in the above case of State ex rel. McKittrick v. Dwyer that the City of St. Louis suggested to the court in its motion for rehearing that if the Treasurer of the City of St. Louis was an elective officer as contended by the Attorney General, then there was serious doubt whether there was any provision in the law for the bond, salary or the appointment of deputies are the duties of

the city treasurer and requested the court that if it still took the position that this was an elective office that it modify its opinion so as to point out to the city the way in which the treasurer might be commissioned and his bond and salary fixed, etc. In that case the court overruled the motion for rehearing without any comment on these questions. So evidently from that statement there was serious doubt on the part of the city of whether or not there was any law which fixed the salary of the City Treasurer of the City of St. Louis at that time.

From a reading of the Act of 1939 pertaining to the office of the City Treasurer of the City of St. Louis, it is quite apparent that the lawmakers, when this bill was under consideration, took the position that there was no provisions under the statutes for the salary of the City Treasurer of the City of St. Louis because in Section 7 of said Act, which was the emergency clause, they so stated. We must assume that the lawmakers had before them, at the time of the consideration and passage of this bill, the matters which were suggested in the Respondent's brief in the State ex rel. McKittrick v. Dwyer case.

There is a rule of law that the legislative construction of the old statute, as it applies to the St. Louis City Treasurer, is entitled to consider. In *Morgan v. Jewell Const. Co.*, 91 S. W. (2d) 638, 641, the court announced this rule:

"It is well established that a construction of a statute by the Legislature, as indicated by the language of other or subsequent enactments, is entitled to consideration as an aid to interpreting a statute. 59 C. J. p. 1033; State ex rel. v. Hackmann, 275 Mo. 47, 54, 204 S. W. 513; State ex inf. v. Long-Bell Lumber Co., 321 Mo. 461, 12 S. W. (2d) 64; Evans v. McLalin, 189 Mo. App. 310, 175 S. W. 294; State ex rel. v. Wilson,

supra; Crohn v. Kansas City Home Telephone Co., 131 Mo. App. 313, 109 S. W. 1068. And where the controversy has arisen since the enactment of the subsequent statute or amendment wherein the Legislature has indicated that the statute should be taken to mean a certain thing, such legislative construction should be given great weight. \* \* \* \* \*

It will be noted also that the lawmakers passed the Act of 1939 with an emergency clause which clearly indicates that they thought that the act should go into effect at once in order that the conditions as they existed pertaining to the city Treasurer of the City of St. Louis at that time could be corrected immediately.

While the courts are not bound by the construction placed upon an act by the lawmakers, yet such a construction under circumstances similar to those here, we think should be given great weight.

Section 12138, Laws of Missouri, 1937, at page 427, provides 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."

This is the general county treasurer's act section, but as stated in the McKittrick v. Dwyer case, supra, the provisions of the general county treasurer's act applied and where a duty is imposed on the county court to perform, then under Section 24 of the Scheme for the Separation and Reorganization of the Governments of the City of St. Louis, the authority of the county court is conferred



on the municipal assembly.

Section 14796, R. S. Missouri 1929, provides:

"All acts and parts of acts which provide for the performance of any duty or trust by any county court in this state, shall also include the municipal assembly, and the mayor and comptroller of the city of St. Louis."

Section 12138, supra, was under consideration by our Supreme Court in the case of *Givens v. Daviess Co.*, 107 Mo. 603. In that case the question of the salary of the county treasurer of Daviess County was under consideration. The effect of the ruling of the court in that case was that since the county court was authorized to allow the treasurer for his services such compensation as may be just and reasonable that it could raise or lower or change the compensation of the treasurer at any time during his term depending upon the duties imposed on that officer. While the court did not in the *Givens v. Daviess County* case, supra, definitely make such a statement, we note that in *Dietrich v. Brickey*, 277 S. W. 615, the St. Louis Court of Appeals, in considering a case in which a change of the salary of the treasurer of Jefferson County was being considered, and at l. c. 616 that court said:

"Our Supreme Court has decided that the compensation of the county treasurer could be increased, changed, or diminished during the incumbency of that office. See *Givens v. Daviess County*, 107 Mo. 603, 17 S. W. 998. So then, in fixing or changing the compensation of the treasurer, the defendants were acting within the express jurisdiction conferred on them by law, and it requires the strongest, most cogent, and satisfactory evidence to warrant another

judicial tribunal to adjudge the members of such court guilty of fraud and corruption in office."

In the Dietrich case it will be noted that the treasurer of Jefferson County was elected in 1920 for a term expiring in 1924, and at the time he was elected he was receiving a salary of Fifteen Hundred Dollars per annum. Before his term expired, the court, in 1923, reduced this salary to One Thousand Dollars. In making this order the court took the position that One Thousand Dollars was just and reasonable compensation for this officer's services at that time. The court held in that case that in the absence of fraud or corruption the county court had the authority to make that change in the officer's salary. This case was again before the St. Louis Court of Appeals in *Dietrich v. Brickey*, 48 S. W. (2d) at page 69, and the action of the county court in fixing the salary of the county treasurer was affirmed.

In *Givens v. Daviess County*, supra, l. c. 608, the court said:

"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. *Gammon v. LaFayette Co.*, 76 Mo. 675; *Koontz v. Franklin Co.*, 76 Pa. St. 154; *Fitzsimmons v. Brooklyn*, 102 N. Y. 536; *Walker v. Cook*, 129 Mass. 579; *Knappen v. Supervisors*, 46 Mich. 22; *City Council v. Sweeney*, 44 Ga. 465. 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. *State ex rel. v. Smith*, 87 Mo. 158; *City of Hoboken v.*

Gear, 27 N. J. L. 278; United States  
v. Fisher, 109 U. S. 143.

"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 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. \* \* \* \* \*

Considering the Missouri cases cited above which have dealt with the county treasurer's salary, it seems that the courts have taken the view that the salary of the county treasurer which is fixed by the county court or municipal assembly, is not such a compensation that may not be increased or diminished during the term of the office of the incumbent. That being the case, the salary fixed by the county court, under the old county treasurer law, is not within the provisions of Section 8 of Article XIV of the Constitution of Missouri.

#### CONCLUSION.

From the foregoing it is the opinion of this

Honorable John J. Dwyer

(12)

December 16, 1939

department that since the salary of the City Treasurer of the City of St. Louis, under the old county treasurer act, was not a fixed salary, and since it was subject to change by the county court or municipal assembly at any time during the term of the incumbent, that that office was not within the provisions of Section 8 of Article XIV of the Constitution. That being the case, it is the opinion of this department that the City Treasurer of the City of St. Louis, under the Act of the Legislature of 1939, page 486, would be authorized to receive the salary as city treasurer of Eight Thousand Dollars per annum, beginning on May 22, 1939, which was the date that the act was approved with the emergency clause.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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W. J. Burke  
(Acting) Attorney General

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