

OFFICERS: Salaries of elected officers of city operating under special charter may, by ordinance, be reduced.

May 12, 1943



Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Dear Sir:

This will acknowledge receipt of your letter of April 28, 1943, in which you request an opinion upon a question involving reduction of salaries of city officers. I quote the first paragraph of this letter, which reads as follows:

"I respectfully request your opinion upon the following proposition of whether or not a Council of a Town under Special Charter, may by Ordinance, reduce the salary of an elective official of such Town."

The provisions of our statutes which concern themselves to cities or towns under special charter may be found in Chapter 38, Article 14, of the Revised Statutes of Missouri, 1939. At Section 7442 R. S. Missouri, 1939, we find that portion of the statutes which prescribes that ordinances must conform to the State law and we further cite Ex Parte Tarling, 241 S. W. 929. Then, at Section 7447 R. S. Missouri, 1939, we find a provision that certain officers may be elected in cities under special charter. These sections above are cited for your information as we deem it necessary so to do before taking up the question involved, but they are not quoted in full because of their length.

At the outset it is necessary to assume certain facts in this connection. Not having a copy of the special charter and the provisions of that charter before me, particularly the portion concerning the enactment for repeal of ordinances, we assume that under your special charter the city of Carrollton has the right to enact and repeal ordinances. We further assume that Carrollton has never operated other than as a city under a special charter. While the city has the right

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to take advantage of those articles relating to cities of the third class, it has not done so. See the Constitution of Missouri, Article IX, Section 7, page 132c. Also, *Kansas City et al v. Scarritt*, 127 Mo. 642.

Before discussing the matter as to whether the compensation of officers may be decreased, it is well to note that there is a direct provisions in our statutes prohibiting the compensation of officers being increased during their term of office. We refer to the Constitution of Missouri, Article XIV, Section 8, page 165c, which reads 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."

See *Lycett v. Wolff*, 45 Mo. 489, l. c. 496, and *Smith v. Pettis County*, 345 Mo. 839, 136 S. W. (2d) 288.

In examining the authorities bearing upon this question we find in point the following:

In the case of *Lycett v. Wolff*, 45 Mo. 489, l. c. 496, the court said:

" \* \* \* \* Now this salary, by reason of the constitutional inhibition (Const. of 1875, art. 14, sec. 8), could not; probably, be increased during the plaintiff's term of office, but we do not see why a falling off in the population of the county, if the census subsequently taken so showed, might not, under the law of 1874, work a decrease. Hence, the census of 1880 was competent and relevant testimony."

In the case of *Smith v. Pettis County*, 345 Mo. 839, l.c. 844, 136 S. W. (2d) 288, the court said:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. (Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857; Ward v. Christian County, 341 Mo. 1115, 111 S. W. (2d) 182.) \* \* \* \* \*"

The court held, in the case of Givens v. Daviess County, 17 S. W. 998, l. c. 999, 107 Mo. 603, l. c. 608, that:

"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."

In the case of Holman v. City of Macon, 137 S. W. 16, l. c. 17, we find the following:

"1. Municipal Corporations (Sec. 120\*)—  
Ordinances - Construction.

"City ordinances are to be governed by the same rules of interpretation as apply to legislative enactments.

"(Ed. Note. - For other cases, see Municipal Corporations, Cent. Dig. Secs. 274-280; Dec. Dig., Sec. 120.\*)"

"2. Municipal Corporations (Sec. 162\*)- Ordinances - Construction - Compensation of Officers.

"Where the statutes invest a municipal corporation with the power to regulate and fix the compensation of municipal officers, the ordinances enacted for that purpose must be treated as though passed by the Legislature itself.

"(Ed. Note. - For other cases, see Municipal Corporations, Dec. Dig. Sec. 162\*)

"3. Officers (Sec. 98\*)- Compensation - Statutory Provisions.

"A public officer cannot demand any compensation for his services not specifically allowed by statute, and statutes fixing such compensation must be strictly construed."

In the case of *The City of Kansas v. White*, 69 Mo. 27, 1. c. 27, the court held:

" \* \* \* By the charter, the city had authority to pass ordinances to suppress gaming. It, of course, had authority to repeal them when passed. \* \* \* \* \*"

In 43 C. J., Sec. 887, page 562, we find the following:

" \* \* \* Subject to limitations hereinafter considered, the power of a municipal council to repeal ordinances is by necessary implication as broad as the power to enact them, \* \* \* \* \*"

In 43 C. J., Sec. 888, page 563, we find:

"The power to repeal ordinances cannot be exercised by a municipality where the effect of such repeal would be to interfere with vested rights acquired under the ordinance which it is sought to repeal. But an ordinance may be repealed at any time before compliance with the steps necessary to render it effective, because in such case no one is deprived of any vested right,  
\* \* \* \* \*

In 43 C. J., Sec. 890, page 564, we find:

"The simple and direct mode of effecting repeal of an ordinance is by a later ordinance passed by the common council, enacting that the former ordinance, describing it, is hereby repealed."

In McQuillin Municipal Corporations, Second Edition, (Revised Vol. 2), Sec. 871, page 1127, we find the following:

"Specific grant of power to amend or repeal ordinances is not necessary in view of the general rule that power to enact them unless restricted, implies power to repeal them. Thus an ordinance fixing the fiscal year of a municipal corporation is an administrative measure and is subject to repeal. Generally speaking, all ordinances are subject to repeal. The corporation cannot abridge its own legislative powers and pass irrevocable ordinances. The members of the legislative body are trustees of the public, and the tenure of their office impresses their ordinances with liability to change. And where an ordinance granting rights to the streets expressly reserved the power of repeal, reasons which induced the passage of a repealing

ordinance cannot be inquired into by the courts, to affect its validity. In the absence, therefore, of a valid provision to the contrary the council of a municipal corporation having the authority to legislate on any given subject may exercise that authority at will by enacting or repealing an ordinance in relation to such subject-matter. Such in varying form is the statement of the rule when the ordinance is not a contract, or one that is, from its nature, exhausted from a single exercise. The efficacy of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it."

In *Municipal Corporations*, by Dillon, Fifth Edition, Vol. 1, at page 157, we find the following:

"When the Constitution by its terms recognizes cities and other municipalities existing under special charters as a special class by providing that the legislature shall make provision by general laws whereby any city, town, or village organized under a special or local law may become subject to the general laws relating to such corporation, such corporations form a separate and independent class recognized by the Constitution. \* \* \* \* \*

(See also, *Rutherford v. Hamilton*, 97 Mo. 543; *Kansas City v. Stegmiller*, 151 Mo. 189 and *Elting v. Hickman*, 172 Mo. 257.)

#### CONCLUSION

From the above and foregoing, the writer is of the following opinion:

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That the members of the city council are public officers, and, as such are entitled to that salary provided by ordinance of the legislative council. If a new council desires to pass an ordinance repealing one under which salaries are now being paid, and they enact one reducing the salaries now being paid, we find that there are no constitutional inhibitions preventing the repealing of the former ordinance and the adoption and passage of a new one which said new ordinance reduces salaries of the council members.

Respectfully submitted

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APPROVED BY:

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ROY McKITTRICK  
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