

OFFICERS : Treasurer^d can not receive extra compensation
COUNTY for taking care of accounts of county toll
TREASURERS: bridges.

11-26
November 19, 1941

Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri



Dear Sir:

Under date of October 20, 1941, you wrote this office requesting an opinion as follows:

"I have been requested by the County Court and Mr. H. C. Young, Treasurer of Saline County, to write you for an opinion as to whether the county can pay Mr. Young a salary in addition to the salary as determined by Sec. 13465 of the Laws of Missouri, 1941, for taking care of the Saline County-Miami Bridge Fund. Since the bridge has been built Mr. Young has taken care of all the accounts for the county; has collected all fees and is still doing so. Since Section 13465, above mentioned, reduces his salary approximately \$500 a year, the County Court would like to know if they can pay him additional compensation for his services in looking after the Miami Toll Bridge Fund. The amounts of the accounts which he supervises are as follows: Saline County Miami Toll Bridge, interest and sinking fund \$30,657; Revenue Fund \$2,667.47, and operation and maintenance on hand \$16.57. There are two other funds, namely, Saline County

Hon. Marion Robertson

(2)

Nov. 19, 1941

Miami Toll Bridge Construction Fund
No. 1 \$6,276.73, and Saline County
Miami Toll Bridge Construction Fund
No. 2 - \$524.28.

"Since this bridge adds many additional duties to those that the County Treasurer already has, the County Court is interested to know if they may compensate the Treasurer for these duties."

Later information was received from you to the effect that what reads Section 13465 in the letter of request should read Section 13800. This opinion is written with the understanding that your request pertains to Section 13800, R. S. Missouri, 1939, as enacted by the Sixty-first General Assembly, Laws of 1941, page 534.

The new Section 13800 as enacted by the Sixty-first General Assembly, definitely fixes the salary of the county treasurer in certain counties, Saline County falling into one of the classes for which the salary of the Treasurer is fixed. After fixing the salaries the Act contains the following:

"* * * * * Provided, salaries set out and prescribed in this section shall be in lieu of any other or additional salaries, fees, commissions or emoluments of whatsoever kind for county treasurers in all counties of this state to which this section, by its terms, applies, the provisions of any other statute of this state to the contrary notwithstanding."

By Section 8347, Article IV, Chapter 46, R. S. Missouri, 1939, the authority is conferred upon counties and other political or civil subdivisions to acquire, construct, operate and maintain toll bridges.

Section 8548 of the same Article and Chapter prescribes the method of financing the acquiring and constructing of such toll bridges. This section is as follows:

"In order to secure funds for the purpose of acquiring, constructing, owning and operating, improving or extending, and maintaining toll bridges, and approaches thereto, all public agencies named in the preceding section may issue negotiable toll bridge revenue bonds and sell such bonds to the United States Government, or any authorized agency thereof, or other investor or investors. In the event of the issuance and sale of bonds authorized by this act by a public agency, such agency shall charge a reasonable toll for the use of any such toll bridge, the amount of which toll shall be sufficient to pay the reasonable cost of maintaining, repairing and operating such bridge and to provide a sinking fund sufficient to amortize and repay any such loan, including interest and financing cost, on such dates and within such period of time as may be agreed upon between the borrower and the original purchaser of such revenue bonds, and said tolls shall be used for no other purpose; and any public body which shall issue bonds under the provisions of this act is hereby authorized and required to make all necessary provisions for the payment of principal and interest on any such bonds by the fixing, collecting, segregating, and allocating of the tolls and other revenues received from the operation of said bridge or bridges. Such public agencies enumerated above may execute liens in proper form, pledging the revenue derived from the toll from such toll bridges or parts thereof which are constructed or acquired with funds borrowed as aforesaid, to the retirement of

such bonds: Provided, however, that no revenue bonds or any liens securing such bonds shall be repaid in whole or in part from any funds arising from taxation, nor shall any such bonds or liens given under authority of this act constitute a lien on any other property of any such public agency or a pledge of the credit of such agency; and provided further, that at such time when all moneys borrowed as aforesaid shall have been repaid, together with interest and charges thereon, no further toll shall be charged for the use of such bridges by the traveling public. Such bonds may be made negotiable, may bear interest not to exceed 6 per cent, per annum, and may mature annually or semi-annually, and may be sold at such time and in such manner as the issuing authority may determine upon."

Bonds issued in accordance with Section 8548, supra, do not create an indebtedness of the municipality issuing them. State ex rel. City of Hannibal v. Smith, 74 S. W. (2d) 367. The bonds not being considered an indebtedness of the municipality and being payable solely from tolls collected from persons using the bridge might lead to the conclusion that the funds collected to be applied to the payment of the bonded indebtedness through the collection of tolls were not public funds, but were rather in the nature of trust funds. However, the Supreme Court of Kentucky, in the case of Louisville Bridge Commission v. Louisville Trust Company, 81 S. W. (2d) 894, in discussing the status of similar bonds issued by the City of Louisville held the funds collected to pay such bonds were public funds.

Inasmuch as the funds gathered for the purpose of paying such bonds by the collection of tolls from the users of the bridge are public funds, it remains to be determined whether or not a county treasurer who handles the accounting

of such public funds, in a county where a toll bridge has been built under the provisions of the aforementioned sections of the statutes, may lawfully be paid added compensation for such work.

No compensation may be paid to an officer unless there is some law authorizing the payment. In the case of *Smith v. Pettis County*, 136 S. W. (2d) 282, it is said at l. c. 285:

"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*, Mo. Sup., 129 S. W. (2d) 857; *Ward v. Christian County*, 341 Mo. 1115, 111 S. W. (2d) 182. * * * * *"

The above mentioned Sections of the statutes are the only ones dealing with the acquiring or constructing and operating of toll bridges by counties. In neither of them is there any authority to pay to the county treasurer compensation for services he might render. Section 8548, supra, authorizes the collection of tolls, segregating and allocating of the tolls received. And it may be argued from this authorization to do these acts there is authority to pay for their being done. For a municipality has the implied power to do those things which are necessary to carry out express powers. In the case of *State ex rel. City of Hannibal v. Smith*, supra, it is said l. c. 372, 373:

"This point involves only the question of whether the relator has the authority to permit the highway commission and the federal government to participate in the building of the bridge. We will later discuss if their participation is a gift.

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others; (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation -- not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied." Dillon on Municipal Corporations (3d Ed.) Sec. 89.

"We have repeatedly approved this quotation, and very recently in the case of State ex rel. Blue Springs v. McWilliams et al., 74 S. W. (2d) 363, not yet reported (in State reports.)"

And there is a rule of law that an officer may be given extra compensation for services not incident to his office. The leading case on this point is in Converse, Administrator v. The United States, 18 L. Ed. 192, and the rule is also recognized in United States v. Hill, 30 L. Ed. 627, and in numerous cases, in the state courts. In the case of In re Village of Kenmore, 110 N. Y. S., 1008, is the following at l. c. 1014:

"The salary of the village clerk is fixed at \$250 a year. Mr. Pratt, the village clerk during the past two years, has charged and been paid the sum of \$100 for typewriting work. This is for work outside of the transcribing of the minutes of the proceedings of the board of trustees, which has been done by the clerk with a typewriting machine. It does not clearly appear what work is charged for in the item of \$100,

nor that it is of such a character as is not comprehended within his official duties as prescribed by section 82 of the village law. He is entitled to no extra or additional compensation for his official work in addition to his salary. A public officer with a fixed compensation is bound to perform the duties of his office for the compensation provided by law. If such duties become too onerous, he must secure a lawful increase of salary, resign, or submit. *Merzbach v. Mayor, etc.*, 163 N. Y. 16, 57 N. E. 96. For services not incident to his office he is not debarred from receiving compensation from the village. This rule applies as well to policemen upon whom new duties are cast *ex officio*."

Also, in *City of Detroit v. Redfield*, 19 Mich. 382 and *Groesbeck v. Auditor General*, 261 Mich. 243.

If the services being performed are not incidental to the office under the above rules, it might be possible to compensate the county treasurer for his services. But the funds are the public funds of the county and there is only one proper custodian of the public funds of the county, the treasurer.

CONCLUSION.

As the handling of the toll funds derived from the operation of toll bridges by the county treasurer is incidental to the office of county treasurer, no extra compensation can be given for such service.

Respectfully submitted,

APPROVED:

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