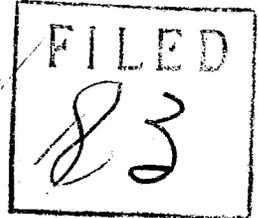


SCHOOLS: Traveling expenses of county superintendents of 3rd and 4th class counties should be figured against total compensation of said officers.

November 25, 1946



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your letter of recent date, which reads as follows:

"House Bills 770 and 771, fixes the salary and the traveling expenses of the county superintendent of schools in counties of the 3rd and 4th class.

In determining the amount of traveling expenses, we would like to have an opinion from your office as to whether both the salary, as fixed in section 1, and the compensation as fixed in section 3 of these two bills, should be added in determining the travel expenses of the county superintendent of schools, or whether only the amounts specified in section 1 of these bills are to be used.

We have received a number of requests from various county school superintendents asking that we secure an opinion from your office on this question."

The provisions of H. B. 770 and H. B. 771 of the 1945 legislature are identical in so far as they relate to the traveling expenses of county superintendents. The portions of said sections dealing with such expenses are found in section 2 of each act and read as follows:

"The county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. * * * * The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasury for the payment of same.* * * * Provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage shall be four cents per mile for each mile actually and necessarily traveled."

It will be observed that by the foregoing provisions, the county superintendents are required to present bills to the county court setting forth their actual and necessary expenditures for traveling expenses, and the county courts are required to pay such bills, subject of course, to the limitation in the first sentence of said sections 2, that the total traveling expenses for any one year shall not exceed twenty-five per cent of the annual salary of such superintendents. It, therefore, becomes necessary to determine what the annual salaries of the county superintendents are.

Sections 1 of said acts, insofar as they relate to the compensation of county superintendents, are identical, except that H. B. 770 contains extra brackets for compensation in counties of various population. The construction of one of said sections would, therefore, be the same as that of the other. H. B. 771 reads as follows:

"In counties of the fourth class in this state, having less than 7,000 population, the county superintendent of schools shall receive \$1050.00 per annum; in those having a population of 7,000 and less than 10,000, he shall receive \$1200.00 per annum; in those having a population of 10,000 and less than 12,000, he shall receive \$1350.00 per annum; in those having a population of 12,000 and less than

15,000, he shall receive \$1600.00 per annum; in those having a population of 15,000 or more, he shall receive \$1800.00 per annum. The State of Missouri shall appropriate annually, out of the general revenue fund of the State of Missouri, \$400.00 to each and every county of the fourth class. The county superintendent of schools shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasury."

It should be noted that in setting the amounts, the county superintendent shall receive, said amounts are not designated either as salary or compensation. The act merely says the county superintendent of schools shall receive a stipulated amount per annum. The last sentence of Section 1 refers to the amount so received as "his salary". Section 3 of said acts provide compensation for county superintendents for their services as supervisors of school transportation. Again the sections of both acts are identical except that H. B. 770 contains more brackets for compensation according to various populations than does H. B. 771, and, therefore, the construction put upon section 3 of either act must necessarily be the same as that put upon the same section of the other act. Section 3 of H. B. 771 reads as follows:

"County superintendents of schools in counties of the fourth class in this state shall be compensated for their duties as supervisors of school transportation, in addition to the salary provided in Section 1 of this act, as follows: In counties having less than 7,000 population, he shall receive \$375.00 per annum; in those having 7,000 and less than 10,000 population, he shall receive \$435.00 per annum; in those having 10,000 and less than 12,000 population, he shall receive \$495.00 per annum; in those having 12,000 and less than 15,000 population, he shall receive \$555.00 per annum; and in those having 15,000 or more population, he shall receive \$615.00 per annum. The county treasurers of the several counties shall pay over such compensation monthly out of funds received

by said county treasurers from the State of Missouri for the purpose of compensating county superintendents of schools for their duties as supervisors of school transportation, at the same time he pays the county superintendent of schools his salary for the performance of his other duties."

It will be observed that the foregoing section provides that the county superintendent "shall be compensated" for his duties as supervisor of school transportation a specified amount per annum in addition to the "salary" provided in Section 1. Here again the act refers to the compensation provided by section 1 as "salary", and in the last sentence of said section, the compensation provided by section 1 is again referred to as "his salary for the performance of his other duties."

We see, therefore, that county superintendents affected by said acts receive compensation for their duties as supervisors of school transportation and also for the performance of their "other duties." The compensation for performance of their "other duties" is referred to as salary, and the compensation for duties as supervisors of school transportation is merely referred to as "compensation". The question to be determined is whether the compensation for duties as supervisors of transportation is a part of the "annual salary" of such superintendents referred to in sections 2 of said acts.

Salary is defined as follows:

"Recompense, usually periodically, for services rendered." Webster's New Standard Dictionary

"A stipulated recompense for services rendered, usually fixed for one year and paid pro rata, at varying periods, as weekly, monthly, etc.; hire; wages." Webster's Twentieth Century Dictionary

From the foregoing definitions it appears that a salary is merely a stipulated compensation payable periodically. Annual salary would be one fixed by the year, although payable at different periods during the year. A monthly salary would be one fixed by the month. When, therefore, H. B. 770 and H. B. 771 provide a compensation per year they in effect provide an annual salary whether they denominate the compensation "salary" or merely "compensation". By said acts the compensation for county superintendents for their duties as supervisors of transportation is fixed at a stipulated sum per year, and it is provided that said sum shall be paid to said officers monthly. Said compensation is, therefore, an annual salary, payable monthly.

We think the following cases support the above conclusion:

In *Kellogg v. Story County et al*, 257 NW 778 (Iowa), the court was considering a statute regarding the salary of a county superintendent of schools. In the opinion the court said:

"It is provided by section 5232 of the code that each county superintendent of schools shall receive an annual salary of not less than \$1,800 per year and such additional compensation as may be allowed by the board of supervisors in each particular county.

The question is strictly one of statutory construction. It is true that both the words "salary" and "compensation" are used in section 5232. They are, it seems to the court, used without differentiation. The compensation to be awarded to the county superintendent is in the nature of salary, and any amount added by the board to the minimum provided by the statute must be treated as a part of such salary."

In *Spokely v. Haaven*, 237 NW 11 (Minn.), the Court was considering a statute which limited campaign disbursements for county offices to a sum of not exceeding one-third of the salary to which such person would, if elected, be entitled during the first year of his incumbency in such office. Said statute further provided that if such person would not receive a salary, then the limit would be one-third of the compensation which his predecessor received during the first year of such predecessor's incumbency. The county officer involved in that case was a sheriff whose compensation was a salary plus certain fees, and the question was whether in determining the limit of campaign expenditures for that office both the salary and fees should be added together. The court, after quoting various definitions of "salary" and "compensation" said:

"We are of the opinion that the legislature intended to base its restriction on such disbursements, at least in a measure, in proportion to the gross official income. It seems apparent that it was the intention of the legislature to limit the authorized campaign expenses to one-third of the official income for the first year in office. Compensation was the controlling element. From a practical viewpoint and for the purpose of the particular law there could be no reason for making a distinction between 'salary' and 'fees', and we hold that the word 'salary' used in this legislative enactment was used in its flexible broad sense of compensation including both 'salary' and 'fees'."

In *United Boxboard and Paper Co. v. McEvan Bros. Co.* 76 A. 550, 554 (N.J.) the Court said:

"I see no difference between salary paid for services and compensation rendered or allowed for services. Salary in its general sense is a compensation for services rendered by one to another, but because it may be stipulated for beforehand the word gives to the thing no dignity, force, or operation which is not included in the word 'compensation'."

When, therefore, the legislature by sections 2 of the acts under discussion used the words "annual salary", we think it meant the total annual compensation. This would include both the salary as supervisor of transportation and the salary for other duties. The provisions as to expenses were evidently designed to reimburse the county superintendents for money expended by them in traveling while performing their duties. There would be no reason to assume that the legislature intended that the county superintendents should bear their own expenses while traveling in connection with their duties as supervisors of school transportation, but should be reimbursed for their expenses while traveling in the performance of their other duties. We believe the provisions of Sections 2 regarding the traveling expenses were designed to guarantee that the county superintendents should receive their compensation for their own use and that they should not be required to use any part of same for traveling expenses.

Conclusion

It is, therefore, the opinion of this office that the annual salary of the county superintendent of a county of the third class is the total sum of the salary provided by Section 1 of H. B. 770 and the compensation for acting as supervisor of school transportation provided by Section 3 of said act and that the annual salary of the county superintendent of a county of the fourth class is the total sum of the salary provided by Section 1 of H. B. 771 and the compensation for acting as supervisor of school transportation provided by Section 3 of said act; and that said superintendents are entitled to be reimbursed for amounts actually and necessarily expended for their traveling expenses in performing the duties of their office, not to exceed, however, twenty-five per cent of said annual salaries.

Yours very truly,

Harry H. Kay
Assistant Attorney General

APPROVED:

J. E. Taylor, Attorney General

HHK/vlv