

SCHOOLS:
COUNTY SUPERINTENDENTS:
SALARIES:

County superintendents of schools in counties of the third class may receive the additional compensation provided for in Senate Bill No. 177 of the 64th General Assembly.

September 5, 1947



Honorable Harold L. Miller
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Dear Sir:

This is in response to your letter of recent date wherein you request an official opinion from this department, which is as follows:

"Will you please advise me whether or not the increase in pay of a County Superintendent of Schools for Third Class Counties, under Senate Bill No. 177 of the 64th General Assembly for certain duties connected with the budget comes within the purview of Article 14, Section 8 of the Constitution of the State of Missouri, for a term of office commencing 1 July 1947, thereby prohibiting such increase during said term of office?"

We note from your letter that you refer to Article XIV, Section 8 of the Constitution of Missouri 1945. That provision was in the Constitution of 1875. The Constitution of 1945, Section 13 of Article VII, which contains similar provisions, reads as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

The provisions of said Section 8 of Article XIV of the 1875 Constitution had been before the courts of this state on a number of occasions, and courts have uniformly held that where additional duties are imposed upon an officer for which he is compensated that this provision of the Constitution does not prohibit him from receiving such compensation. In the case of Harvey vs. Sheehan, 269 Mo. 421, 190 S.W. 864, the court held that "an act which enjoins on an officer new and additional duties and provides merely a compensation therefor, is not violative of the provision of the Constitution prohibiting any increase in the pay of an officer during his term of office."

Senate Bill No. 177 of the 64th General Assembly, which was approved on June 6, 1947, by Section 1 thereof, insofar as it applies to this question, is as follows:

"For the information and guidance of the officers and qualified voters, in connection with the problem of school tax rates, the county superintendent of schools in each county of the third class shall, not later than the first day of March of each year, in cooperation with the clerk of the board of such district, prepare, or cause to be prepared, for each school district under his supervision, a detailed budget of estimated receipts and disbursements, including the amount of receipts recommended as necessary from district taxes. Such budget shall list estimated receipts by funds and sources, and estimated disbursements by funds and purposes, in such detail as may be prescribed by law and by the State Board of Education; and shall have appended thereto a statement of the rate of levy per hundred dollars of assessed valuation required to raise each amount shown on the budget as coming from district taxes. The district clerk shall add a condensed copy of said budget to each required notice of the annual meeting. In the expenditures of said district during the ensuing year, no variation shall be allowed from the totals shown in the budget estimate except on written authorization of the county superintendent. At the end of each school year, and not later than July 15 of each year, the clerk of each such district shall prepare a detailed report in form as may be prescribed by the State Board of Education showing all expenditures of the preceding year from various funds and sources, and such county superintendent shall audit and examine the same; and if such report is in conformity with the budget, or any modifications or variations therefrom as authorized by such county superintendent, he shall certify his approval thereof to the State Board of Education. In the event that expenditures exceed budget estimates, or modifications thereof, in the various funds in which state funds are made available, the excess

expenditures shall be deducted from the allocation from the state funds for the ensuing year. * * * " (The remaining portion of this section provides for the compensation payable to the county superintendents for their services rendered under this section.)

(Underscoring ours.)

Since the courts have held that the constitutional provision does not prohibit the payment of additional compensation to officers for additional duties, then the question here would be, does this bill impose additional duties on the county superintendents of schools. Referring to the statutes which were in effect at the time this bill was passed and when the present county superintendents were elected, we find that under Section 10612, R. S. Mo. 1939, some duties were imposed on county superintendents which relate to the fiscal affairs of the school districts. This section provides in part as follows:

" * * * he shall furnish, annually, statements to the district clerks showing the assessed valuation of their respective districts; he shall receive, and, if properly made, approve estimates and enumeration lists and turn same over to the county clerk; he shall assist the district clerks, when necessary, in making their reports, and see that all warrants have been duly issued 'by order of the board,' either for services actually rendered or for material actually furnished."

Section 10613, Laws of Missouri 1945, page 1675, also refers to duties of the superintendents of schools. It reads in part as follows:

" * * * He shall examine the records of the county, so far as they relate to school funds and school moneys, see that the law is strictly observed, and shall be present at the August term of the county court, to give such information as may be of importance to said court in the transaction of all business pertaining to the school interests of the county; and the instruction of the State Board of Education shall be his guide in the interpretation and execution of the law."

Comparing the duties of the superintendents of schools as they existed prior to the enactment of Senate Bill No. 177 with the duties which are imposed on them under said Senate Bill No. 177, it will be found that under said Senate Bill No. 177, some of the same duties may be imposed on county superintendents as were imposed prior to the enactment of that bill. However, from reading this bill as a whole, we think that there are additional duties imposed on county superintendents additional to those under the old law. Referring to said Senate Bill No. 177, it will be found that the superintendent of schools, in cooperation with the clerk of the board of the school district, is required to prepare a budget of receipts and disbursements including the amount of receipts recommended as is necessary from district taxes. This budget shall also contain information as to the rate of levy per \$100.00 assessed valuation required to be imposed to raise the taxes required for taking care of budget items. We also find that the county superintendent audits the accounts of the various districts for the preceding year, and if the districts have stayed within the bounds of the budgets, he certifies that fact to the State Board of Education. In case any district does not stay within the bounds of the budget, then it would seem his duty to report that to the State Board of Education which would deduct over-expenditures from allocations to such district for the ensuing year.

From an examination of said Senate Bill No. 177, it would seem that the lawmakers had attempted to make county superintendents of schools the budget officers for the various school districts in the county. The duties of the county superintendent as provided for in this bill are similar to those which are imposed on the county clerks or budget officers in counties which have a budget officer. So, reading this act as a whole, and comparing it with the old law, this office is of the opinion that additional duties have been imposed on county superintendents of schools by said Senate Bill No. 177 of the 64th General Assembly.

Another rule of construction applicable here would be that the constitutionality of statutes must be presumed.

CONCLUSION

From the foregoing, it is the opinion of this department that county superintendents of schools in counties of the

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third class would be entitled to the additional compensation provided for in Senate Bill No. 177 of the 64th General Assembly wherein such superintendents were made budget officers of the school districts of such counties and additional compensation for that service was provided therefor.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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