

COUNTY TREASURER: In counties of third class, except counties under township organization, treasurer not entitled to one-half of one percent for disbursing school money in addition to his regular salary.

Copy to J. Smith

March 5, 1947

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Mr. B. E. Ragland
Chief Clerk
State Auditor's Office
Jefferson City, Missouri

Dear Mr. Ragland:

Your letter of recent date asking for an opinion of this office reads as follows:

"House Bill No. 780, enacted by the 63rd General Assembly, provides for the compensation of county treasurers in counties of the 3rd class, except counties under township organization.

"Section 10400 of House Bill No. 494, enacted by the 63rd General Assembly, provides in part 'and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury.'

"We request your official opinion advising us whether or not the county treasurers can receive any compensation under provisions of House Bill No. 494, in addition to compensation provided for in House Bill No. 780."

The question in your letter is, can the County Treasurer receive, in addition to his compensation provided for in House Bill No. 780, Section 13800.3, additional fees as provided for in House Bill No. 494, Section 10400.

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Section 13800.3 of House Bill No. 780, passed by the 63rd General Assembly and approved March 7, 1946, reads as follows:

"The county treasurers in counties of the third class of this State, except counties under township organization, shall receive for their services annually, to be paid out of the county treasury in equal monthly installments at the end of each month by a warrant drawn by the county court upon the county treasury, the following sums: In counties having less than 7,500 inhabitants, the sum of \$1,300; in counties having more than 7,500 inhabitants and less than 10,000 the sum of \$1,400; in counties having more than 10,000 inhabitants and not more than 12,500, the sum of \$1,500; in counties having more than 12,500 inhabitants and not more than 15,000 the sum of \$1,800; in counties having more than 15,000 inhabitants and not more than 20,000, the sum of \$2,200; in counties having more than 20,000 inhabitants and not more than 25,000 the sum of \$2,400; in counties having more than 25,000 inhabitants and not more than 30,000, the sum of \$2,400; in counties having more than 30,000 inhabitants but not more than 35,000, the sum of \$2,750, in counties having more than 35,000 inhabitants but not more than 40,000, the sum of \$3,200; and in counties having more than 40,000 inhabitants, the sum of \$3,500; 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: Provided however that this increase in compensation shall not apply during their present terms of office."

Section 10400 of House Bill No. 494, passed by the same General Assembly and approved March 25, 1946, reads as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts,

until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by this chapter, except in counties having adopted the township organization law, in which counties the township trustee shall be the custodian of all school moneys belonging to the township, and be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; and on his election, before entering upon the duties of his office, he shall give a surety company bond, with sufficient security, in the probable amount of school moneys that shall come into his hands, payable to the State of Missouri, to be approved by the county court, and paid by the county court out of the county common school funds, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over the amount of the security available in the bond; and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one percent of all school moneys disbursed by him, and to be paid out of the county treasury: Provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

In order to reach a proper understanding of your question and solve the problem, it is necessary that we go back to the

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origin of what was Section 13800, R. S. Missouri, as amended in 1941, and the clause in Section 10400, R. S. Missouri, 1939, which permits the county court to allow to the treasurer for disbursing school moneys not to exceed one-half of one per cent of the amount disbursed, to be paid out of the county treasury.

The statute providing for the pay for the county treasurers was first enacted in 1855 (Laws of Missouri 1855, page 523). This law provided that:

"He shall be allowed for his services under this act, such compensation as may be deemed just and reasonable."

This statute with slight amendment remained the law of the state until 1941, when it was repealed by the 61st General Assembly, Laws of Missouri 1941, page 534. The section as it was before it was repealed read 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."

In 1941 the General Assembly for the first time specifically fixed the amount to be paid county treasurers, and for all intents and purposes the 1941 law is identical with House Bill 780, because it fixed the amounts and provided that such amounts would be in lieu of all other additional salaries, fees, commissions or emoluments of whatsoever kind, the provisions of any other statute to the contrary notwithstanding. From a reading of the above history it will be seen that the pay of the county treasurers as it now is fixed came into existence in 1941.

The section of the law in House Bill 494 giving to the county treasurer compensation for the disbursement of school moneys first appeared in the law of this state in 1865, Laws of Missouri 1865, page 170. This statute has been carried down through the years intact except that the percent that may be allowed has been changed from time to time.

The question is therefore presented whether a later law which is intended to cover the entire field repeals by implication an earlier law relating to the same subject matter when there is no conflict or inconsistency between the two laws.

We believe the rule is aptly stated in *Manker v. Faulhaber*, 94 Mo. 430, 6 S. W. 372, l.c. 439 and 440 as follows:

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"* * * * The two statutes should be so construed as that both may stand if possible. Repeals by implication are not favored by the courts for cogent and sufficient reasons not necessary to repeat, and the prior law is to be upheld if the two acts may well subsist together. * * * * *
* * * * *
In order that the latter shall operate a repeal of the former, the two acts must be irreconcilably inconsistent, or it must clearly appear that the legislature intended by the latter act to prescribe the only rule that should govern in the case provided for.
* * * * " (Underscoring ours)

What was said in Meriwether v. Love, 167 Mo. 514, 67 S.W. 250, we believe is especially apropos to the question in the instant case when Judge Marshall said, l.c. 520:

"The intention to repeal the old law and to substitute a new and sufficient system in place of the old law is therefore perfectly plain. It is argued, however, that there is no necessary repugnancy between the old and the new systems, that both can stand together, and therefore there is no repeal by implication; or, otherwise stated, that the courts can not imply an intention of the lawmakers to repeal the old and leave only the new system. The answer to this is afforded by the Act of 1897 itself, for the lawmakers have left nothing to implication or to be inferred, as to their intention--they distinctly declare that the Act of 1897 was enacted for the purpose of 'taking the place of statutes which failed in their object.' * * * * *
(Underscoring ours)

The statute under discussion in the case above, stated that its purpose was to take the place of statutes which failed in their object. House Bill #780 provides that the statute is to take the place of all laws which relate to the compensation or fees of county treasurers. Therefore, we believe it is apparent that House Bill #780 repealed all other laws relating to compensation of county treasurers and it is the sole statute to which county treasurers look in order to determine their pay.

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A question might arise as to the effect of the repeal and re-enactment by the 63rd General Assembly in 1945 of the two statutes under discussion. The title to House Bill No. 780 provides as follows:

"AN ACT to provide for the compensation of county treasurers in counties of the third class, except counties under township organization, and to repeal an act of the Sixty-first General Assembly, approved August 7, 1941, and found at pages 534 and 535 of the Laws of Missouri, 1941."

The title to House Bill 494 reads as follows:

"AN ACT to repeal Section 10400, Article 2, Chapter 72, relating to schools and the county treasurers and their duties and bond required as custodian of school moneys and compensation for such services, and to enact a new section in lieu thereof relating to the same subject, to be known as Section 10400."

From a reading of the above two titles it will be seen that House Bills Nos. 780 and 494 merely repeal and re-enact existing laws.

A reading of the two bills discloses that the purpose of the Legislature in repealing and re-enacting the acts was to amend those acts. It will be noted that the provisions now under consideration were left substantially as they were before 1945. As to the effect of the action of the 63rd General Assembly of 1945, we believe the rule is aptly stated in the syllabus in the case of *Collins v. Twellman*, 126 S. W. 2d 231 wherein it is said:

"Where two conflicting statutes had been repealed and re-enacted without substantial change, fact that the earlier statute, as re-enacted, became effective subsequent to effective date of act re-enacting the later of the two statutes was without effect, as respects which of the statutes was controlling. Mo. St. Ann. Secs. 13097, 13757, pp. 4155, 6978."

Therefore, the only effect that the repeal and re-enactment had as to the provisions now under discussion was to continue the provisions as they were before such repeal and re-enactment.

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CONCLUSION

It, therefore, is the opinion of this department that the County Treasurer, in counties of the third class not under township organization, is only entitled to his salary as provided for in Section 13800.3 of House Bill No. 780 of the Laws of 1945, and is not entitled to any compensation for disbursing the school moneys as provided in Section 10400 of House Bill No. 494, Laws of 1945.

Respectfully submitted

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED

J. E. TAYLOR
Attorney General

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