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SALARY—JUDGE, COURT OF APPEALS—INCUMBENT, EFFECTIVE DATE OF SENATE BILL 223, 97th GENERAL ASSEMBLY—PAYABLE ENTIRELY FROM STATE TREASURY.

SYLLABUS:

The salary of a judge of the court of appeals, who was serving as such on the effective date of Senate Bill No. 223, enacted by the 97th General Assembly, is payable entirely from the state treasury.

Columbus, Ohio, October 21, 1947

Hon. Joseph T. Ferguson, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your attention is directed to the provisions of S. B. No. 223, enacted by the 97th General Assembly, providing for certain changes in reference to the compensation paid judges of the court of appeals, judges of the common pleas court, and judges of the probate court.

“In connection with this Act, the question has arisen as to whether the salary of a judge of the court of appeals, who is serving as such on the effective date of the Act, becomes entirely payable from the State Treasury, on and after the effective date of S. B. No. 223.

“Your opinion on this matter would be appreciated.”

Senate Bill No. 223, to which you refer, was enacted by the 97th General Assembly on June 13, 1947, approved by the governor on June 20, 1947, and filed in the office of the secretary of state on June 21, 1947, and became effective on September 19, 1947.

Prior to the effective date of Senate Bill No. 223, to which you refer, the salaries of judges of the court of appeals were provided for in Section 2251 and Section 2253-2, General Code, at which time these sections read in part as follows:

Section 2251, General Code.

“The annual salaries of the chief justice of the supreme court and of the judges herein named payable from the state treasury shall be as follows:

* * * “Judges of the court of appeals, each, eight thousand dollars. * * *”

Section 2253-2, General Code.

“In addition to the salary allowed by Sections 1569 (1529) and 2251, each judge of the court of appeals shall receive an annual compensation from each county in the appellate district in which such judge is elected or appointed, in the following manner: * * *”

and thereafter follows the manner of computation of such compensation.

On the effective date of Senate Bill No. 223, existing Sections 2251 and 2253-2, General Code, among other sections, were repealed and a new section numbered 2251 and a new section numbered 2253-2 became effective.

You now ask as to whether, after such effective date, the salaries of the judges of the court of appeals are payable entirely out of the state treasury.

Section 2251, General Code, as set out in Senate Bill No. 223, now provides in part as follows:

“The annual salaries of the chief justice of the supreme court and of the judges herein named payable from the state treasury shall be as follows: * * *

“Judges of the court of appeals, each, eight thousand dollars.
* * *

“* * * provided, however, that from and after the expiration of the term of office of any judge of the court of appeals holding office on the effective date of this act, such annual salary shall be twelve thousand dollars; * * *”

It is to be noted that the above section now provides for an annual salary of \$12,000 to judges of the court of appeals effective from and after the expiration of each such judge's term of office, and whereas formerly only \$8,000 of such annual salary was payable out of the state treasury, now under Section 2253-2, General Code, the additional annual

compensation is also payable by the state of Ohio out of the state treasury, from and after the expiration of the term of office of any such judge holding office on the effective date of Section 2253-2, General Code.

Section 2253-2, General Code, as set out in Senate Bill No. 223, now provides as follows:

“From and after the expiration of the term of office of any judge holding office on the effective date of this act the additional annual compensation herein provided shall be paid by the state of Ohio, payable from the state treasury, to each judge of the court of appeals during the present respective term for which each such judge shall have been elected or appointed; and from and after the expiration of the term of office of any judge holding office on the effective date of this act, each respective county shall be relieved and released from making such payments.”

It appears from a reading of the above statute that a phrase or a part of a sentence has been omitted with reference to “each judge of the court of appeals.” The sense is not completed and the sentence is grammatically incorrect. However, it appears that it was the intent of the legislature to grant some financial relief to the counties by providing that the additional annual compensation granted by Section 2251, General Code, to judges after the expiration of their present respective terms, should be payable by the state of Ohio from the state treasury; and that the counties should be, upon the effective date of Senate Bill No. 223, relieved from paying any part of the salaries of judges of the court of appeals. Senate Bill No. 223, repealed the former Section 2253-2, General Code, which provided for contributions by the counties to the salaries of judges of the court of appeals. This repeal would have the effect of reducing the present salaries of such judges by the amounts contributed by the counties unless other provisions were made by the paying of such amounts. A reduction of such salaries would be in conflict with Article II, Section 20, of the Constitution which provides as follows:

“The General Assembly in cases not provided for in this Constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

See State, ex rel. v. Donahey, 101 O. S. 490.

It is apparent that the legislature did not intend to attempt to reduce

the salaries of judges of the court of appeals, but to relieve the counties immediately from contributing to such salaries and to provide another method of payment, namely, by the state out of the state treasury. While Section 2253-2, General Code, in itself, is not clear when read together with the other sections noted and when the action of the legislature in repealing former Section 2253-2, General Code, is considered, its meaning is obvious, namely, that the legislature meant that after the effective date of Senate Bill No. 223 all of the salary of a judge of the court of appeals should be payable out of the state treasury.

I am therefore of the opinion that the salary of a judge of the court of appeals, who was serving as such on the effective date of Senate Bill No. 223, enacted by the 97th General Assembly, is payable entirely from the state treasury.

Respectfully,

HUGH S. JENKINS,
Attorney General.