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PUBLIC OFFICIAL—NOT GOVERNED BY SALARY REDUCTION ACT
WHEN—H. B. NO. 1, THIRD SPECIAL SESSION OF 89TH GENERAL
ASSEMBLY—SUBJECT TO SALARY REDUCTION UNDER SAID
ACT WHEN.

SYLLABUS:

1. *Officers whose salaries are governed by Article II, Section 20 of the Constitution of Ohio who entered upon their term of office during the period when House Bill No. 1 of the third special session of the 89th General Assembly was in effect and whose term extends beyond the expiration date of such salary reduction act, December 31, 1934, are not thereafter governed as to their salary or compensation by such House Bill No. 1.*

2. *When a vacancy occurs during the period when House Bill No. 1 of the third special session of the 89th General Assembly is in effect, in an office the term of which commenced before the effective date of such House Bill No. 1, the person appointed to fill such vacancy is required to accept the salary provided in that bill until December 31, 1934, the expiration date thereof.*

COLUMBUS, OHIO, December 28, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

QUESTION 1: When an official, whose salary is governed by the provisions of Article II, Section 20, of the Constitution, entered upon his term of office after the effective date of House Bill No. 1, passed by the Third Special Session of the 89th General Assembly, effective January 1, 1933, and his term extends beyond the expiration date of that bill, for the period beyond the expiration date is he entitled to the salary fixed by law, regardless of the provisions of said bill?

QUESTION 2: When a vacancy occurs during the term of incumbency, which term commenced before the effective date of said House Bill No. 1, and the vacancy occurs prior to the expiration date of that bill, will the successor appointed to fill the vacancy be required to accept the salary provided by that bill until the expiration date of the bill?”

Article II, Section 20 of the Constitution of Ohio provides:

“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.”

House Bill No. 1 of the third special session of the 89th General Assembly unquestionably modifies or suspends the permanent statutes with respect to salaries of certain officers and employes for a period of two years only. The act throughout provides for reductions in certain salaries “during the period

beginning January 1, 1933, and ending December 31, 1934". It is further provided in section 6 thereof that "This act shall be in effect from January 1, 1933, until December 31, 1934." The power to suspend laws is expressly vested in the General Assembly by Article I, Section 18 of the Ohio Constitution.

With respect to those incumbents in office whose term of office began during the period when this salary reduction act was in effect, the law governing their salary has not been changed since the date when such officers took office, and although the laws provide for a change in salary after December 31, 1934, such change was provided for at the time these persons took office. We are accordingly not here concerned with the question of the power of the General Assembly to pass an act during the term of such incumbents in office changing their salary, but with the question of whether or not Article II, Section 20, *supra*, prohibits the legislature from enacting a law providing a variable compensation for officers, whose compensation is not provided for in the Constitution, to be applicable to those who take office after the effective date of such law. Article II, Section 20, *supra*, provides that "The general assembly * * shall fix * * the compensation of all (such) officers; but no change therein shall affect the salary of any officer during his existing term * *." If it should be provided that an officer shall receive a certain salary during his first year in office and a different salary during his second year in office, although the salary would be changed during his term, the law fixing his salary would not be changed providing it was in effect before the beginning of the term. Under such circumstances, the officer takes office knowing just how much he is to receive each month during his term, the amount being fixed by law at the beginning thereof.

An examination of the reported cases in Ohio discloses no adjudication of this point. The question was, however, decided in the Supreme Court of Missouri construing a provision of the constitution of that state substantially the same as the provision of the Ohio Constitution with which we are here concerned. I refer to the case of *State, ex rel. Moss vs. Hamilton*, 303 Mo. 302, 260 S. W. 466. Section 8 of Article XIV of the Missouri Constitution there under consideration read:

"The compensation or fees of no state, county or municipal officer shall be increased during his term of office, nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In that case, the court considered an act of the Missouri legislature passed in 1915 which provided that the clerk of the circuit court elected in 1918 for a four year term should receive a salary based upon the population of the county, resulting in the clerk's salary, as computed in accordance with the provisions of the act, being \$1600 for the years 1919 and 1920 and \$1950 for the years 1921 and 1922. The Supreme Court of Missouri held that such act providing for an increase of the officer's compensation during his term was not violative of the Constitution, it being in effect before the incumbent took office. At page 314 of the opinion, the court said:

"If the act of 1915 had said that the circuit clerk of Crawford county elected in 1916 shall receive \$1600 per year for the first two years, and \$1950 per year for the last two years of the term, there would be no

question. Section 8 of Article 14 of the Constitution could not be invoked, because the salary would not be either increased or decreased during the term. To my mind the act of 1915 as it now stands is no nearer a violation of Section 8 of Article 14 of the Constitution, than the supposed law."

The foregoing decision is, in my judgment, sound and dispositive of your first question.

It is accordingly my opinion that officers whose salaries are governed by Article II, Section 20 of the Constitution of Ohio who entered upon their term of office during the period when House Bill No. 1 of the third special session of the 89th General Assembly was in effect and whose term extends beyond the expiration date of such salary reduction act, December 31, 1934, are not thereafter governed as to their salary or compensation by such House Bill No. 1.

Your second question is answered by the decision of the Court of Appeals for Muskingum County in the case of *State, ex rel. vs. Tanner*, 27 O. C. A. 385, the syllabus of which is as follows:

"The salary of an appointee to a vacancy in a public office is controlled by the law in effect at the time his appointment was made, and not by the law in effect at the time his predecessor was elected for the term which he is to complete."

This case was followed in Village of *Newcomerstown vs. State, ex rel.* 36 O. A. 434, 440. Your attention is also directed to an opinion of this office appearing in Opinions of the Attorney General for 1928, Vol. I, page 256, the syllabus of which is as follows:

"A common pleas judge, appointed subsequent to the effective date of the amendment of Section 2252 of the General Code (112 O. L. 345), to fill an unexpired term, is entitled to the increased compensation provided by the amendment of that section."

In this opinion the then Attorney General reviewed the Tanner case, *supra*, and also commented upon the case of *Zangerle vs. State, ex rel.*, 105 O. S. 650, which indirectly affirmed the position taken by the Court of Appeals in the Tanner case.

It is accordingly my opinion that when a vacancy occurs during the period when House Bill No. 1 of the third special session of the 89th General Assembly is in effect, in an office the term of which commenced before the effective date of such House Bill No. 1, the person appointed to fill such vacancy is required to accept the salary provided in that bill until December 31, 1934, the expiration date thereof.

Respectfully,
JOHN W. BRICKER,
Attorney General.