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TAX COMMISSIONER—AGENT APPOINTED UNDER SECTION 5348-2b G. C., AMENDED SENATE BILL 345, 97 GENERAL ASSEMBLY—ENTITLED TO DRAW MONTHLY COMPENSATION EQUAL TO ONE-TWELFTH OF ANNUAL SALARY—COMPENSATION ACCORDING TO STATUTORY FORMULA FOR EACH MONTH ACTUALLY SERVED AS SUCH AGENT—IN NO CASE SHALL SUCH COMPENSATION EXCEED \$125.00 PER MONTH.

SYLLABUS:

An agent of the Tax Commissioner appointed under the provisions of Section 5348-2b, General Code (Amended Senate Bill No. 345, 97th General Assembly), is entitled to draw monthly compensation equal to one-twelfth of his annual salary, computed according to the statutory formula, for each month actually served as such agent, and in no case shall such compensation exceed \$125 per month.

Columbus, Ohio, November 25, 1947

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, which request is as follows:

“Amended Senate Bill No. 345, as enacted by the 97th General Assembly, became effective September 30th, 1947, and provides that the Tax Commissioner may appoint agents to perform such duties as the Tax Commissioner may prescribe for the purpose of enforcing the provisions of Sections 5348-2 and 5348-2a of the General Code.

Said bill further provides that as compensation therefor, such agents shall receive annually four cents per capita for each full one thousand of the first ten thousand of the population of the county, and one cent per capita for each full one thousand over ten thousand of the population of the county, as shown by the last federal census, which shall be paid to such agents in equal monthly installments from the state's share of the undivided inheritance tax in the county treasury, on warrant of the county auditor.

The amount paid to any agent for duties performed in inheritance tax matters shall not exceed fifteen hundred dollars in any calendar year.

Appointments have been made by the Tax Commissioner, effective October 1, 1947. Therefore, such agents will serve for a period of three months during 1947.

To use a specific case to illustrate the question we wish to present: The Tax Commissioner has appointed an agent in a county whose population is 330,000, and, using the above formula to calculate the compensation, the same would amount to \$3,600.00.

QUESTION: For the months of October, November and December, is such agent entitled to draw compensation at the rate of \$300.00 per month, making a total of \$900.00 for the calendar year 1947, or does the \$1,500.00 limitation set forth in the law limit the compensation to be drawn for the remainder of the year 1947 at the rate of \$125.00 per month?"

Your request sets out the pertinent provisions of Amended Senate Bill No. 345 of the 97th General Assembly which provides as follows:

"Section 1. That supplemental Section 5348-2b of the General Code be enacted to read as follows:

Section 5348-2b. For the purpose of enforcing the provisions of Sections 5348-2 and 5348-2a of the General Code the tax commissioner may appoint agents in the unclassified service who shall perform such duties as shall be prescribed by the tax commissioner, and as compensation therefor shall receive annually four cents per capita for each full one thousand of the first ten thousand of the population of the county and one cent per capita for each full one thousand over ten thousand of the population of the county, as shown by the last federal census, which shall be paid to such agents in the unclassified service in equal monthly installments from the state's share of the undivided inheritance tax in the county treasury on the warrant of the county auditor, any other provision of law to the contrary notwithstanding. Provided, however, that the amount paid to any agent in the unclassified service for duties performed in inheritance tax matters, as directed by the tax commissioner, shall not exceed fifteen hundred dollars in any calendar year."

Your question can best be answered by first considering whether the act provides for an annual salary with a maximum of \$1500 for the Tax Commissioner's agents, or for the payment of fees with the same maximum provided.

The act provides that the Tax Commissioner may appoint agents who shall perform duties to be prescribed. The compensation for these duties is to be computed on the basis of the population of the county of the agent's residence, with a maximum of \$1500, and in no way depends on the amount of work done by the agent. If the agent resides in a small county his compensation may be less than \$1500, but in any case it is definitely ascertainable on January 1 of each year, or whenever the agent assumes his duties. The act then prescribes that the agent shall be paid his money in equal monthly installments. In my opinion this provision means that the agent shall be paid monthly one-twelfth of his annual compensation computed according to the statutory formula.

Let us compare this method of computing the agents' compensation with some instances considered by my predecessors in which the statute provided for a fee system of compensation with a provision for a maximum consideration. In Opinion No. 1271, Opinions of the Attorney General for 1939, page 1883, the statute under consideration provided that a probate judge should receive certain fees for each inheritance tax matter heard by him with a maximum of \$3000 to be paid to any judge in any one year. A probate judge died, having already drawn \$3000 for the year, and it was held that his successor was entitled to collect fees at the same rate and subject to the same limitation for the balance of the year.

In Opinion No. 6612, Opinions of the Attorney General for 1944, page 17, the statute involved provided that a township clerk should receive \$350 annually plus two percent of the excess over \$5000 in the township's annual budget, with a provision that no clerk should receive over \$600 in any calendar year. There were three holders of the office of clerk during one calendar year, and it was held that each one was entitled to receive that portion of the annual salary representing time served, plus two percent of that part of the excess over \$5000 actually disbursed by him, with no clerk to receive over \$600 in all.

I cite the above opinions, not because they are dispositive of the question which you ask, but because they are apt illustrations of the fee method of compensating public officials. Under such statutes it is known at the beginning of any year that certain fees will be received during the year by the holder of the office. The amount of these fees is not exactly ascertainable in advance. The statutes further provide that these fees shall

be collected as earned until a certain maximum compensation has been drawn. This is an entirely different manner of compensation from the fixed annual salary method which, in my opinion, was employed in the act under consideration.

With the distinction between these two methods of compensation in mind, let us consider the specific question which you have asked. The agent in question was appointed October 1, 1947 and will serve for the last three months of the year. Applying the statutory formula to the population of the agent's county, his compensation would be \$3600 if it were not for the maximum provision, so of course he is entitled to an annual compensation of \$1500. It seems clear to me that this annual compensation is predicated on the agent's performing his duties for a full year, since it does not depend on the amount of work performed. It follows, therefore, that it must be reduced proportionately for the months in which the agent did not work, and that he should be paid at the rate of \$125 per month only for the months he is actually employed.

The alternative method of compensation which you suggest in your request is to divide the \$3600, arrived at by the method set out above, into twelve installments of \$300 each, and to pay one such installment in each of the three months of October, November and December. While it is true that such a method of compensation would not exceed the \$1500 maximum for the year 1947, I do not believe it is the method contemplated by the statute. If followed to its logical conclusion it would mean that an agent in the same county serving during 1948 or any succeeding full calendar year would receive \$300 per month for the first five months of the year and nothing thereafter. This obviously was not the intent of the statute which calls for payment in equal monthly installments. It could be argued with just as much logic that the \$1500 should be divided into three installments of \$500 each payable in October, November and December, or that an agent employed December 1 should receive the entire \$1500. I do not believe that this was the legislative intent and any such attempt to apply a fee method of computing the agent's compensation is unjustified.

In specific answer to your question it is therefore my opinion that an agent of the Tax Commissioner appointed under the provisions of Section 5348-2b, General Code (Amended Senate Bill No. 345, 97th General Assembly), is entitled to draw monthly compensation equal to one-twelfth

of his annual salary, computed according to the statutory formula, for each month actually served as such agent, and in no case shall such compensation exceed \$125 per month.

Respectfully,

HUGH S. JENKINS,
Attorney General.