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SALARIES OF COUNTY OFFICIALS—AM. SUB. H. B. 560, 99 G. A.—NO EFFECT ON COMPENSATION OF ANY OFFICERS NAMED WHO WERE SERVING EFFECTIVE DATE OF ACT, SEPTEMBER 8, 1951.—OFFICERS WILL CONTINUE TO RECEIVE COMPENSATION FIXED BY LAW IN FORCE AT TIME THEIR TERMS BEGAN.

SYLLABUS:

The enactment by the 99th General Assembly of Amended Substitute House Bill No. 560, relative to the salaries of county officials, had no effect on the compensation of any of the officers therein named who were serving at the effective date of said Act, to-wit, September 8, 1951, and said officers will continue throughout their respective terms to receive the compensation fixed by the law in force at the beginning of their respective terms.

Columbus, Ohio, September 7, 1951

Hon. Thomas H. Blakely, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

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

“H. Z. P. was elected Auditor of Lake County, Ohio, at the November, 1950, election. The legislature passed General Code

Section 2990 effective September 8, 1951, at the same time the legislature repealed General Code Section 2990-1, which section had provided for an additional 30% of annual compensation of auditors. Mr. P.'s salary is, of course, based on the 1950 census. Our question is—what is the effect of the passage of General Code Section 2990, effective September 8, 1951, and the repeal of General Code Section 2990-1 on the annual compensation of Mr. P., if any.

“It is provided in Article II, Section 20 of the Constitution of Ohio, that no change in compensation shall affect the salary of any officer during his existing term unless the office be abolished.

“Our County Auditor has requested the writer to obtain an opinion on the above question so that he may proceed with the September payroll with assurance of its correctness.

“While our immediate question relates to County Auditors, I wish to call your attention to the fact that G. C. Section 2991-1 providing for additional compensation for County Treasurers was repealed, effective September 8, 1951; that G. C. Section 2993-1 providing for additional compensation for County Clerk of Courts was repealed, effective September 8, 1951; that G. C. Section 2994-1 providing for additional compensation for Sheriffs was repealed, effective September 8, 1951; that G. C. Section 2995-1 providing for additional compensation for County Recorders was repealed, effective September 8, 1951; that G. C. Section 3001-1 providing for additional compensation for County Commissioners was repealed, effective September 8, 1951, and Section 3003-1 of the G. C. providing for additional compensation for Prosecuting Attorneys was repealed effective September 8, 1951.

“I would appreciate an interpretation of the above.”

Prior to the passage of Amended Substitute House Bill No. 560 of the 99th General Assembly, the salary of a county auditor was fixed by Section 2990, General Code, which read as follows:

“Each auditor shall receive one hundred dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election;

sixty-five dollars per thousand for each full one thousand of the second fifteen thousand of such population of the county;

fifty-five dollars per thousand for each full one thousand of the third fifteen thousand of the population of the county;

forty-five dollars per thousand for each full one thousand of the fourth fifteen thousand of such population of the county;

thirty-five dollars per thousand for each full one thousand of the first fifteen thousand of such population of the county ;

and five dollars per thousand for each full one thousand of such population of the county, in excess of ninety thousand."

By the provisions of Section 2990-1, General Code, effective September 20, 1947, county auditors were allowed compensation for a limited period. That section read as follows :

"County auditors shall receive, in addition to the annual compensation fixed, limited or determined by section 2990 of the General Code, during the period beginning on the second Monday in March, 1951, and ending on the Sunday immediately preceding the second Monday in March, 1955, an amount equal to thirty per cent of their annual compensation as fixed by said section 2990, provided, however, the annual compensation of a county auditor during the period referred to in this section shall not be less than \$2400.00 nor more than \$7200.00."

It will be noted that by making the date of the beginning period of this supplementary compensation the second Monday in March, 1951, the General Assembly eliminated any possibility that it could be claimed to inure to the benefit of any county auditor then in office. Since by the terms of the Act of the General Assembly, passed January 28, 1920, 108 O. L., 1294, extending the term of office of the county auditor from two to four years, it was provided that the first election for the office of county auditor should be held in November, 1922, and subsequent elections quadrennially thereafter, and that his term should commence on the second Monday in March next after his election, it would follow that the next election for county auditor occurring after the passage of Section 2990-1, supra, would be in November, 1950, and then his term of office would begin on the second Monday in March, 1951.

Amended Substitute House Bill No. 560 amended Section 2990, General Code, to read as follows :

"Each auditor shall receive one hundred forty-three dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election ;

ninety-three dollars per thousand for each full one thousand of the second fifteen thousand of such population of the county ;

seventy-nine dollars per thousand for each full one thousand of the third fifteen thousand of the population of the county ;

sixty-four dollars per thousand for each full one thousand of the fourth fifteen thousand of such population of the county;

fifty dollars per thousand for each full one thousand of the fifth fifteen thousand of such population of the county;

thirty-six dollars per thousand for each full one thousand of the sixth fifteen thousand of such population of the county;

and seven dollars per thousand for each full one thousand of such population of the county, in excess of ninety thousand; provided, however, the annual compensation of a county auditor shall not be less than two thousand six hundred dollars nor more than nine thousand dollars, including the total compensation provided by this section and any additional compensation which the county auditor may receive by virtue of the provisions of Senate Bill 22 passed by the General Assembly and effective August 17, 1951."

By the same Act, Section 2990-1 was repealed. The effect of this legislation, therefore, is to substitute the salary schedule embodied in the new Act for the old provision of Section 2990 and the supplementary allowance contained in Section 2990-1.

It is very clear that the effect of this new legislation is to increase the annual compensation of a county auditor materially beyond that he has received under former Sections 2990 and 2990-1.

Your question is as to the effect of these legislative changes on the salary of the auditor who has been in office since the second Monday in March, 1951. It appears to me we need only make reference to the provisions of Section 20 of Article II of the Constitution, to find the answer to this question. It is there provided:

"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 is abolished."

We must ascribe to the General Assembly full knowledge of this constitutional limitation, and accordingly, in considering any amendment to the statutes relative to the salary of any officer, we have a right to assume, in the absence of any attempt on the part of the legislative body to make the change effective as to present incumbents, that it was only intended to affect officers thereafter inducted into office. In such case there would be no question as to the constitutionality of the enactment.

This assumption is explicit in the enactment by the General Assembly of many salary laws, as for instance, the passage of an amendment to Section 2248, General Code, materially increasing the salaries of elective officers. That Act took effect on November 30, 1947, but no one, so far as I know, ever suggested that the Governor and other state officers who were in office at the time of the passage of that amendment might be entitled to avail themselves of the increased salaries therein provided. Obviously, and without any question being raised, it was understood that the new salaries would apply only to the officers whose terms would begin after the effective date of that amendment.

It might be suggested that the repeal by Amended Substitute House Bill No. 560 of Section 2990-1, General Code, which granted a supplementary salary to the county auditor from and after the second Monday in March, 1951, would have the effect of depriving the auditor now in office of the benefits of that section. It could have no effect any more than could an increase in the salary inure to his benefit. The inhibition of Section 20 of Article II of the Constitution is equally against a decrease in salary as against an increase, during the term of the officer.

The case of *State, ex rel. Mack v. Guckenberger*, 130 Ohio St., 273, while arising under a different state of facts, is yet, in my opinion, quite in point as showing the attitude of the new law toward increases or decreases in the salary of an elective officer during his term. In that case, the relator, Mack, had been elected as common pleas judge for a term of six years, commencing on January 3, 1939, under a statute which had been passed long prior thereto, fixing his compensation at an amount based upon the population of the county "as ascertained by the *last federal census* of the United States"; and the population of the county having been increased as shown by the federal census of 1940, the relator brought an action in mandamus to require the payment to him of the increased salary occasioned by this increase in population. The court allowed the writ and held that such increase was not in violation of the constitutional prohibition contained in Section 14, Article IV of the Constitution forbidding the legislature to make a change in the salary of a judge of the common pleas court during his term of office. The court pointed out in the opinion that the law upon which his salary was to be based had been enacted before his term began, and that no legislation had been undertaken subsequent to the beginning of his term whereby his salary would be

affected either by an increase or decrease, but by the terms of the law he was entitled to the increase arising from the increase of population as shown by the later federal census.

It will be observed that in the case which you present, the basic salary of the auditor was, under the law existing when he took office, to be computed on the population figures supplied by the census "next preceding his election." This provision is quite different from that in the Mack case, and a county auditor cannot take advantage of the increase, if any, in the population of his county as revealed by the census taken during his term. This distinction, however, does not affect the present auditor, and you are correct in stating that his salary is based on the 1950 census.

However, the amendment contained in the new law which increases the factor of computation based on the census from one hundred dollars for each thousand of the first fifteen thousand of population as shown by the last federal census preceding his election to one hundred and forty-three dollars, constitutes a clear increase of salary which can only accrue to the benefit of an officer whose term shall begin after the effective date of this enactment. The same is to be said of the other figures which follow in the scale. It will be noted that while this new law would supersede the provisions not only of Section 2990 but also of Section 2990-1 granting a thirty per cent supplement, yet the increases that are made by the schedule contained in the new law are in each case substantially more than thirty per cent and therefore the conclusion is inevitable that the effect of the new law is to bring about an increase in the salary of the auditor. Accordingly, it could not have been intended by the legislature to apply to the present incumbent and can only be effective as to one who takes office after the effective date of the Act, which is September 8, 1951.

Your letter calls attention to the fact that in addition to the changes made in the compensation of the county auditor, like changes have been made by the same Act in the salaries of county treasurer (Section 2991), county clerk (Section 2993), sheriff (Section 2994), county recorder (Section 2995), county commissioners (Section 3001), prosecuting attorney (Section 3003), coroner (Section 2855-3), and county engineer (Section 7181).

Without going into detail as to the precise provisions of these statutes, it may be said that they are practically identical in their effect upon the compensation of each of the officers named and obviously the

same conclusion would be reached in regard to those officers, to wit, the new salary schedule provided by Amended Substitute House Bill 560 can apply only to those officers who are inducted into their respective offices after the effective date of the Act under consideration.

In specific answer to your question, it is my opinion that the enactment by the 99th General Assembly of Amended Substitute House Bill No. 560, relative to the salaries of county officials, had no effect on the compensation of any of the officers therein named who were serving at the effective date of said Act, to wit, September 8, 1951, and said officers will continue throughout their respective terms to receive the compensation fixed by the law in force at the beginning of their respective terms.

Respectfully,

C. WILLIAM O'NEILL

Attorney General