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CORONER—PROVISIONS OF SECTION 2855-3, G. C., 96 GENERAL ASSEMBLY, NOT OPERATIVE TO CHANGE COMPENSATION OF CORONER WHO IS IN OFFICE AT EFFECTIVE DATE OF ENACTMENT—CORONER SHOULD CONTINUE TO RECEIVE COMPENSATION PROVIDED BY LAW IN FORCE WHEN THEN EXISTING TERM BEGAN.

SYLLABUS:

The provisions of Section 2855-3, General Code, enacted by the 96th General Assembly will not be operative to change the compensation of a coroner who is in office at the effective date of said enactment, and he will continue during his then existing term to receive the compensation provided by the law in force when such term began.

Columbus, Ohio, September 27, 1945

Hon. Leo E. Carter, Prosecuting Attorney
Caldwell, Ohio

Dear Sir:

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

“Does the change from the fee system as provided under Sections 2856 to 2866-1a by the enactment of Senate Bill No. 92 in the 96th General Assembly create a conflict in violation of Article II, Section 20 of the Constitution of Ohio, making the coroner entitled to a larger salary the remainder of the incumbent's term of office?”

Prior to the enactment of Senate Bill No. 92 by the 96th General Assembly, the duties and compensation of a coroner were covered by Sections 2856 to 2866-1a, inclusive, of the General Code. All of the above mentioned sections which in any way related to compensation were repealed by said enactment. Prior to such repeal, Section 2856-4, General Code, provided as follows:

“In counties having a population, according to the last federal census, of four hundred thousand or more the coroner shall receive a salary of six thousand dollars per annum, payable monthly from the county treasury upon the warrant of the county auditor.”

Section 2866, General Code, read as follows:

“Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services.”

Section 2866-1, General Code, provided that in counties having a population of less than 400,000 the total compensation of the coroner should in no case exceed \$5,000 or be less than \$150 per annum.

In the new act, Section 2855-3, General Code, was enacted, reading as follows:

“The annual salary of the coroner shall be four hundred dollars in counties of less than 25,000, as ascertained by the latest federal census of the United States. The coroner shall receive additional compensation as follows: one and one-half cents (1½c) per capita for the population of such county in excess of 25,000 and not in excess of 200,000; and one cent (1c) per capita for the population of such county in excess of 200,000. Such annual compensation shall not be more than six thousand dollars, payable monthly by the county treasurer of such county on the warrant of the county auditor.”

It is impossible, of course, to determine whether or not a coroner in a given county would receive more or less under the new act than he would have received under the former law. That fact will, in my opinion, have no bearing on the conclusion we must reach in answer to your question. Section 20 of Article II of the Constitution of Ohio reads 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.”

(Emphasis added.)

There were a number of early decisions of our Supreme Court which held that the words “compensation” and “salary” as used in Section 20 of Article II had different meanings, and in accord with that theory it was held that an officer might during his term have his compensation either reduced or increased, so long as the change related only to fees and did

not actually increase or diminish his definite salary. *Thompson vs. Phillips*, 12 O.S. 617; *Gobrecht vs. Cincinnati*, 51 O. S. 68.

However, the court in later cases appears to have taken a different view of the meaning of the constitutional provision above noted, and in the case of *State, ex rel. Lueders vs. Beaman, Auditor*, 106 O. S. 651, it denied the right of a probate judge who had entered on his term with a fixed salary to receive additional compensation by way of fees in inheritance tax cases. In a later case, *State, ex rel. vs. Kelser*, 133 O. S. 429, the court had before it a state of facts somewhat similar to that which you present. In that case the term of a county commissioner had begun when Section 3001, General Code, was in effect, providing that the annual compensation of each county commissioner should be determined on the basis of the tax duplicate of the county. The General Assembly thereafter amended said Section 3001, so as to provide that the compensation of a county commissioner should be determined by the population of the county with certain provisions as to maximum and minimum. The court refused a writ of mandamus sought by the commissioner to compel the payment to him of the increased compensation produced by the amendment of the law. The court in the opinion clearly indicated that it regarded the words "compensation" and "salary" as used in Section 20 of Article II as being substantially interchangeable. The case of *State, ex rel. Lueders vs. Beaman*, supra, was cited with approval. To like effect, see *State, ex rel. vs. Tracy*, 128 O. S., 242, 253.

These and other cases were reviewed somewhat extensively in an opinion which I rendered on February 6, 1945, being No. 117, where the question presented was as to the right of a probate judge who had entered on a term under a statute providing for fees in inheritance tax cases to take advantage of a change in the statute during his term providing a salary in lieu of fees for such services, and it was held that under the proper application of Section 20 of Article II of the Constitution, he could not receive the additional compensation which would result from the amendment of the law.

Attention also may be called to a further opinion rendered by me on August 4, 1945, being No. 387, in which it was held:

"The words 'compensation' and 'salary' as used in Section 20 of Article II of the Constitution, are used interchangeably, and

when the General Assembly pursuant to the authority of said section, has fixed the compensation of any officer, whether by way of salary or fees or both, any change in such compensation effected by the enactment, amendment of or repeal of any law, shall not operate to increase or decrease the compensation of such officer during his existing term unless the office be abolished."

In the case which gave rise to that opinion, the General Assembly by repealing Section 6502 of the General Code, which provided for fees to county commissioners in certain ditch matters in addition to their salary, had in effect reduced the compensaton of the county commissioners. In that opinion likewise, the authorities were reviewed at some length and the change in attitude of the supreme court was pointed out.

In specific answer, therefore, to your inquiry, it is my opinion that the provisions of Section 2855-3, General Code, enacted by the 96th General Assembly will not be operative to change the compensation of a coroner who is in office at the effective date of said enactment, and he will continue during his then existing term to receive the compensation provided by the law in force when such term began.

Respectfully,

HUGH S. JENKINS

Attorney General