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COUNTY AUDITOR—(1) NEW SALARY SCHEDULE 325.03 RC—NO ADDITIONAL COMPENSATION UNDER 5731.43 RC, UNLESS TERM COMMENCED BEFORE OCTOBER 1, 1955; (2) TERM COMMENCING ON OR AFTER OCTOBER 1, 1955; *NOT* AUTHORIZED TO APPOINT AGENT TO PERFORM SERVICES AND RECEIVE COMPENSATION UNDER 5731.43 RC—THAT POWER OF APPOINTMENT EXERCISED SOLELY BY STATE TAX COMMISSIONER.

SYLLABUS:

1. Under the new salary schedule of Section 325.03, Revised Code, a county auditor cannot receive additional compensation under Section 5731.43, Revised Code, except in the case of county auditors whose terms commenced prior to October 1, 1955.

2. A county auditor whose term commenced on or after October 1, 1955 is not authorized to appoint an agent to perform the services and to receive the compensation provided in Section 5731.43, Revised Code, that power of appointment being placed solely with the Tax Commissioner of Ohio.

Columbus, Ohio, March 8, 1957

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir :

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

“Your opinion of the following question has been requested by the County Auditor of Knox County, Ohio.

“As of January 1, 1957, the County Commissioners of Knox County have appointed a County Auditor for Knox County to serve during the unexpired term of the former county auditor who resigned from office. Under the old salary schedule in Section 325.03 a county auditor’s salary was based upon the population of the county with any additional compensation which the auditor receives by virtue of Section 5731.43 of the Revised Code, which provides for an appointment by the Tax Commissioner of an agent within each county for services in connection with inheritance tax matters at a salary based upon population of the county. When section 325.03 was amended October 11, 1955, the former provisions with reference to additional compensation under Section 5731.43 was omitted by the Legislature.

“Can a county auditor under the new salary schedule of Section 325.03 continue to receive the additional compensation under Section 5731.43 or must the county auditor appoint someone other than himself under Section 5731.43 to receive such additional compensation?”

Section 325.03, Revised Code, referred to in your letter, was amended effective October 11, 1955, to read :

“Each county auditor shall be classified according to the population of the county as shown by the federal census next preceding his election. All such county auditors shall receive annual compensation in accordance with the following schedule:
(detailed schedule omitted)

In essence, the main change in the former Section 325.03, Revised Code, with which we are concerned here, is that the final paragraph of the former Section 325.03, Revised Code, formerly read as follows :

“Such annual compensation of an auditor shall not be less than two thousand six hundred nor more than nine thousand dollars, including the total compensation provided by this section and any additional compensation which the auditor receives by virtue of Section 5731.43 of the Revised Code.”

This paragraph was omitted from the amended act. We must assume that the Legislature intended to omit that paragraph in order to bring about such a change in the law as would result therefrom, and that the omission was not inadvertent. As a matter of fact, regardless of the intent of the Legislature, the actual effect of this omission was to change the law.

In the much cited and followed case of *Slingluff v. Weaver*, 66 Ohio St., 621 at page 626, there is the following authority :

“But it is equally the law, we suppose, that the court does not possess, and should not attempt to exercise, the power of introducing doubt or ambiguity not apparent in the language, and then resort to verbal modification to remove such doubt and conform the act to the court’s supposition with respect to the intent of the Legislature * * *.”

Further along in that same case at 627 :

“But in the construction, both of statutes and contracts, the intent of the framers and parties is to be sought first of all in the words and language employed, and if the words are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the framer’s of the instrument, there is no occasion to resort to other means of interpretation.

“Courts cannot correct supposed errors, omissions or defects in legislation * * *. The office of interpretation is to bring sense out of the words used and not bring a sense into them.”

It is clear then that the omission of the phrase “and any additional compensation which the auditor receives by virtue of Section 5731.43, Revised Code,” in the amended Section 325.03, Revised Code, actually changed the law to the extent that the county auditors claiming compensation under the latter section cannot receive such additional compensation.

There is further evidence which leads us to the same conclusion. Section 325.02, Revised Code, is a statute in *pari materia* with Section 325.03 and must be read with it, as the two are inseparably related. Section 325.02, Revised Code, was also amended on October 11, 1955, and

it relates to salaries of county officers in lieu of fees. The amended Section 325.02 reads:

“The salaries and compensation of county officers provided for by Sections 325.03 to 325.09 inclusive of the Revised Code, shall be in lieu of all fees, costs, penalties, percentages, allowances, and all other perquisites, of whatever kind, which any of such officials collects and receives, *except that county auditors whose terms commence prior to October 1, 1955 shall be entitled to such compensation as is provided by Section 5731.43 of the Revised Code.*”
(Emphasis added)

The last phrase of this section formerly read:

“* * * *except such compensation as is provided by Section 5731.43 of the Revised Code.*”
(Emphasis added.)

There can thus be no doubt that the Legislature intended to, and actually did change the existing law on October 11, 1955, so that no county auditor whose term commenced *after* October 1, 1955, should be entitled to such additional compensation as was formerly authorized under Section 5731.43, Revised Code, which section relates to the appointment of an agent within each county for services in connection with inheritance tax matters, and there is nothing in such latter section which suggests a contrary view.

The statement in the amended Section 325.02, Revised Code, to the effect that county auditors whose terms began prior to October 1, 1955, shall be entitled to such additional compensation, necessarily leads us to the conclusion that as to all county auditors whose terms commenced *after* that date there shall be *no* right to such added compensation.

There is one further question stated in your inquiry; to-wit, must a county auditor appoint someone other than himself to receive such additional compensation under Section 5731.43, Revised Code?

It is my opinion that the county auditor may *not* appoint someone other than himself or *anyone at all* as such agent, for in Section 5731.43, Revised Code, it is clearly provided:

“To enforce Section 5731.43 of the Revised Code, the *tax commissioner* may appoint agents in the unclassified civil service who shall perform such duties as are prescribed by the commissioner * * *”
(Emphasis added)

This section makes it clear that *only* the tax commissioner has the power to appoint agents in regard to Section 5731.43, and no such appointing authority is given to the county auditor.

It is quite possible, of course, that a tax commissioner *would* appoint a county auditor to perform the services in question, which the county auditor could perform, but that officer could not receive any personal compensation in connection therewith. In this case, the county auditor would have to pay any compensation so received into the county treasury as required by Section 325.31, Revised Code :

“On the first business day of each month, and at the end of his term of office, each officer named in Section 325.27 of the Revised Code, shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances, and perquisites collected by his office during the preceding month or part thereof for official services. * * * ”

It is therefore my opinion, and you are advised that :

“1. Under the new salary schedule of Section 325.03, Revised Code, a county auditor cannot receive additional compensation under Section 5731.43, Revised Code, except in the case of county auditors whose terms commenced prior to October 1, 1955.

“2. A county auditor whose term commenced on or after October 1, 1955, is not authorized to appoint an agent to perform the services and to receive the compensation provided in Section 5731.43, Revised Code, that power of appointment being placed solely with the Tax Commissioner of Ohio.”

Respectfully,
WILLIAM SAXBE
Attorney General