

may be erected under the provisions of Chapter 204 of the Acts of 1945.

OFFICIAL OPINION NO. 69

July 20, 1945.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
State House,
Indianapolis 4, Indiana.

Dear Sir:

This will acknowledge receipt of the request from your department for an official opinion on the following question:

Is the salary received by the county treasurer for services rendered as *ex officio* city treasurer to be considered as a part of the compensation of the county treasurer under the limitation of the ten thousand dollars in any one year, as provided by Chapter 192, Acts of 1945?

Chapter 192 of the Acts of 1945 contained an emergency clause and was in full force and effect on March 8, 1945, when signed by the Governor, and provides in part as follows:

“The county treasurers of the state shall receive as their property, in addition to the salary herein provided, six per cent of delinquent taxes collected on personal property and poll taxes during each calendar year and they shall also be entitled to charge and collect as their personal property, subject to the limitations hereinafter made, a demand fee of fifty cents from tax delinquents where collections result from personal demands: *Provided*, That the aggregate of all salaries, demand fees, and percentages of delinquent tax collections as herein provided for and so received by any treasurer, may not exceed ten thousand dollars in any county in any one year, it being the intention of this act to restrict each county treasurer of the state to a total compensation of ten thousand dollars in any one year for all services rendered by him:

“Provided further, That from and after the effective date of this act to January 1, 1946, in counties having a population of not less than two hundred thousand nor more than three hundred thousand, according to the last preceding United States census, the county treasurers of such counties may receive a total compensation for official services in excess of ten thousand dollars per year. * * *”

Chapter 192 of the Acts of 1945, *supra*, amended Section 49-1006 Burns' 1943 Replacement, same being Section 1, Chapter 33, Acts 1937, which latter statute had amended Section 49-1006 Burns' 1933, same being Section 6, Chapter 21, Acts 1933. The last referred to statute was a part of the general statute of 1933 regarding salaries of county officers. Sections 4 and 5 of said Chapter 21 of the Acts of 1933, same being Sections 49-1004 and 49-1005 of Burns' 1933, respectively, prescribed the salaries county treasurers shall receive from the county for such services and further prescribed that such compensation is in lieu of all salaries, fees and per diems except as otherwise provided in said Act. Section 6 of Chapter 21 of the Acts of 1933, *supra*, being a part of said Act, and prescribing such additional fees for such county treasurers, it is clear that at that time such fees were in addition to the regular county treasurer's salary prescribed under Chapter 21 of the Acts of 1933.

It is to be noted that at the same session of the 1933 Legislature there was enacted a general statute regarding classification of cities, same being Chapter 233 of the Acts of 1933, being Section 48-1201 *et seq.* Burns' 1933. This statute as originally enacted, and as amended, in most cases abolishes the office of city treasurer and prescribes such duties shall be performed by the county treasurer in certain class cities and by a clerk-treasurer in other class cities. These various statutes, with their amendments, are summarized under their proper classifications, as follows:

First Class Cities

Under Sections 48-1204 and 48-1222 Burns' 1933, same being Sections 4 and 10 of Chapter 233, Acts 1933, the office of city treasurer was omitted from the list of elective offices.

Under Section 48-1223 Burns' 1933, same being Section 11, Chapter 233, Acts 1933, the county treasurer is to receive sixteen hundred dollars (\$1,600.00) salary for acting as *ex officio* city treasurer. Section 48-1222 Burns' 1933, *supra*, was last amended by Chapter 32 of the Acts of 1945, but such amendment is not material to the question presented. Section 48-1223 Burns' 1933, *supra*, was amended by implication by Section 49-1017 to Section 49-1019, Burns' 1943 Supplement, same being Sections 1, 2 and 3, respectively, of Chapter 234 of the Acts of 1941, as amended, whereby the salary of the county treasurer was restricted to ten thousand dollars (\$10,000.00) per year in lieu of any other fees or salaries, and he was required to serve as treasurer of the civil city and school city without any additional compensation.

It is pertinent to point out that Section 48-1223 Burns' 1933, *supra*, was again amended by Chapter 203, Acts of 1945, wherein the sixteen hundred dollars (\$1,600.00) *ex officio* salary of the county treasurer appears in said Act as it was originally written in 1933, however, this 1945 amendment was for the purpose of increasing the salary of other officers of first class cities and does not change the amount originally stated for county treasurers acting *ex officio* as city treasurers. It merely restated the other original provision of the 1933 statute as far as county treasurers were concerned. I am therefore of the opinion Chapter 203 of the Acts of 1945 would not increase the salary of the county treasurer beyond the maximum ten thousand dollars (\$10,000.00) prescribed by Chapter 234 of the Acts of 1941, *supra*, as such statute is subject to the following well known rule of statutory construction:

Where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate act which has qualified or limited the earlier one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first.

1 Sutherland Statutory Construction (2nd ed.)
273;

Endlich Interpretation Statutes, Sec. 194;
Public Service Commission v. City of Indianapolis (1922), 193 Ind. 37, 49;

Gaughan, *et al.* v. State (1918), 187 Ind. 334, 337;

Collins Coal Co. v. Hadley, *Admrx.* (1905), 38 Ind. App. 637, 648;

City of New Albany v. Lemon, *et al.* (1925), 198 Ind. 127, 133, 134.

Second Class Cities

The office of city treasurer was abolished in most second class cities and the duties transferred to the county treasurer by Section 48-1215 Burns' 1933, same being Section 5, Chapter 233, Acts 1933, as amended by implication by Section 48-1215 (a), 48-1215 (b), 48-1215 (c), Burns' 1943 Supplement, same being Sections 1, 2 and 3, respectively, of Chapter 112, Acts 1935. Section 48-1215 Burns' 1933 was also amended by Section 48-1215 Burns' 1943 Supplement, same being Section 1, Chapter 99, Acts 1943. Each of these statutes exempted cities of the second class owning and operating municipal water works and an electric light plant.

The salaries for county treasurers acting *ex officio* as city treasurers in second class cities are prescribed by the following statutes: Section 48-1224, Section 48-1225, and Section 48-1226, Burns' 1933, same being Sections 12, 13 and 14, respectively, of Chapter 233, Acts 1933.

The statutes regarding second class cities are also effected by the provisions of Sections 49-1022 to 49-1024 Burns' 1943 Supplement, same being Sections 1, 2 and 3, respectively, of Chapter 212, Acts 1943, applying to counties having a population of not less than 200,000 nor more than 300,000, and wherein the county treasurer is required to act *ex officio* as the city treasurer and receives a maximum annual salary of ten thousand dollars (\$10,000.00) in lieu of all salaries, fees and *per diems* prescribed by law. However, this statute under Section 5 of said Act, same being Section 49-1026 Burns' 1943 Supplement, delayed the operation of said Act until after the expiration of the term of office of the county treasurer then serving in office, and of the term of office of the county treasurer theretofore duly elected to such office. It is to be noted this same exemption is provided by Chapter 192 of the Acts of 1945, now under consideration, as such county treasurer

is exempted from its provisions in such class counties until January 1, 1946.

Third Class Cities

No provision is made for the election of a city treasurer in third class cities under Section 48-1216 Burns' 1933, same being Section 6, Chapter 233, Acts 1933, as amended by Section 48-1216 Burns' 1943 Supplement, same being Section 1, Chapter 273, Acts 1943, as amended by Chapter 232 of the Acts of 1945. Under these statutes the county treasurer acts *ex officio* as city treasurer unless the common council of the city at the time prescribed provides for the election of a clerk-treasurer. The salary statute regarding county treasurers acting as *ex officio* city treasurer in third class cities is Section 48-1227 Burns' 1933, same being Section 15, Chapter 233, Acts 1933.

Fourth and Fifth Class Cities

The office of county treasurer is abolished in fourth and fifth class cities and the duties performed by a clerk-treasurer, under the provisions of Sections 48-1217 and 48-1219, Burns' 1933, same being Sections 7 and 8, respectively, Chapter 233, Acts 1933.

It is to be noted a distinction is made between the "Salary" of a public officer and "Fees" of such officer.

1943 Ind. O. A. G., 66, 68.

In the case of *Conter, Treasurer, v. Post* (1934), 207 Ind. 615, the Supreme Court of Indiana in construing Section 48-1215 Burns' 1933, *supra*, same being Section 5, Chapter 233, Acts 1933, on pages 619 and 620 of the opinion said:

"* * * The general act of 1905 (Acts 1905, p. 236, Burns' Ann. Ind. St. 1926, Section 10266, Section 48-1242, Burns' 1933), creates the elective offices of cities by providing that 'the elective offices of the cities of this state shall consist of a mayor, city judge, city clerk, city treasurer and councilmen. . .' By the provision 'the elective officers of cities of the second class shall consist of a mayor, a city clerk, a city judge and members of common council' the General Assembly

of 1933 indicated a clear intent to limit elective officers to the ones enumerated (*Inclusio unius, exclusio alterius*) and there is no authority in paragraph two for the continuance or creation of the office of city treasurer as an appointive office. It follows from the foregoing that there is no office of city treasurer in cities of the second class unless we can say that such office is continued and transformed from an elective office to an ex officio office by the provision that 'the county treasurer shall be ex officio treasurer of all cities of the second class and shall perform all duties now provided by law for the office of city treasurer.'

"In construing the foregoing language it is permissible to look to legislative usage of words and phrases. In Section 195 of the Acts of 1905 (Section 10948, Burns', etc., 1926, Section 48-6701, Burns' 1933, Section 11511, Baldwin's 1934), there is an express provision that 'in any city of the first, second or third class which is a county seat of the county in which such city is located, and which city now has a city treasurer, such office of city treasurer shall, on and after the expiration of the term for which he was elected, be abolished,' and there is the further provision that 'the county treasurer of such county shall be, ex officio, treasurer of such city, and shall perform all the duties of this act required to be performed by city treasurers.' It is perfectly clear that the legislative intent in Section 195 was to abolish the office of city treasurer. But in providing for the performance of the duties of the office of city treasurer by the county treasurer almost the same language was employed as is used in the present act. In the act of 1905 the words 'county treasurer of such county shall be, *ex officio*, treasurer of such city' clearly were not intended to continue the office of city treasurer and to make the county treasurer, *ex officio*, a city officer holding the office of city treasurer, since the act expressly abolished that office. Also it is evident that *treasurer* as used in the phrase 'treasurer of such city' did not mean treasurer in the sense of an officer of the city, *but merely indicated a nature of the functions which would devolve upon the*

*county treasurer as a part of his duties as county treasurer. * * ** (Last emphasis ours.)

It is therefore apparent under the case of Conter, Treasurer v. Post, *supra*, that the county treasurer in acting as ex officio city treasurer in such cities, and in collecting a salary therefor, does so as a part of his duties as county treasurer and not as city treasurer of any such city.

An investigation of county treasurers' reports as well as a consideration of the application of each of the foregoing statutes reveals that in no case does a county treasurer receive as much as ten thousand dollars (\$10,000.00) in any one (1) year from a combination of his salary as county treasurer and from his salary as ex officio treasurer of the city. Therefore Chapter 192 of the Acts of 1945, *supra*, does not tend to decrease the salary a county treasurer receives for his services ex officio as city treasurer, but only tends to limit him in fees provided by said statute to an amount sufficient to increase his compensation to a maximum ten thousand dollars (\$10,000.00).

I am therefore of the opinion the salary received by a county treasurer for services rendered as ex officio city treasurer is to be considered a part of the compensation of the county treasurer under the limitation of ten thousand dollars (\$10,000.00) in one (1) year as provided by Chapter 192, Acts of 1945, subject to the qualification exempting treasurers until January 1, 1946, in counties of from two hundred thousand (200,000) to three hundred thousand (300,000) population.

OFFICIAL OPINION NO. 70

July 23, 1945.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me the letter of your predecessor, received June 27th, 1945, asking the following questions in regard to Chapter 322 of the Acts of 1945: