

928.

APPROVAL—BONDS OF HUBBARD VILLAGE SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, July 28, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Hubbard Village School Dist., Trumbull County, Ohio, \$5,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of school bonds in the aggregate amount of \$75,000, dated October 1, 1920, bearing interest at the rate of 6% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

929.

TREASURER OF STATE—FUNDS OF CONSERVANCY DISTRICT—COMPENSATION FOR SPECIAL DUTIES RELATIVE THERETO—NEW CONSERVANCY ACT REPEALS COMPENSATION SECTION—HELD, PRESENT INCUMBENT MAY RECEIVE SAID COMPENSATION THROUGHOUT PRESENT TERM.

SYLLABUS:

Under Section 47 of the Conservancy Act of 1914, Volume 104 O. L., p. 39, et seq., which particular section was given code number 6828-47, the treasurer of state was required to perform certain specific duties relative to the funds of conservancy districts and by the terms of such section he was allowed reasonable compensation for such services payable out of funds in the hands of the district treasurer and collected for the

purpose of meeting the expenses of administration. The different treasurers of state since 1914 performed these duties and drew such compensation.

Section 6828-47, General Code, was in full force and effect when the present incumbent of the office of treasurer of state entered upon his present term.

On March 30, 1937, the General Assembly passed a new conservancy act which becomes effective July 19, 1937, in which act it repealed Section 6828-47 providing for the treasurer of state's compensation but increased his duties with relation to the funds of conservancy districts, but required him to pay such compensation into the state treasury to the credit of the general revenue fund.

HELD: The present incumbent in the office of treasurer of state is entitled to draw the compensation heretofore fixed by Section 6828-47, General Code during his present term of office under virtue of Section 20 of Article II of the Constitution of Ohio.

COLUMBUS, OHIO, July 28, 1937.

HON. CLARENCE H. KNISELEY, *Secretary of State, Columbus, Ohio.*

MY DEAR MR. KNISELEY: I acknowledge receipt of your communication of recent date as follows:

“Section 6828-47, G. C., provides that Conservancy Districts shall pay to the State Treasurer, reasonable compensation for registering and paying their bonds. This has been the practice for the past several years, but since becoming Treasurer of State, I have received this compensation for the first six months of my term in office.

However, amended Senate Bill 69, passed on March 30, 1937, which was after my election and inauguration, provides that there be no compensation to the State Treasurer, but this money shall be paid into the State Treasury, to the credit of the General Revenue Fund.

The responsibility of handling the thousands of dollars of the Miami Valley Conservancy District, is quite a great one upon the State Treasurer, himself, and one which the Treasurer, alone, must account for.

I feel that this should not take effect during my term of office, since I was elected and served a part of the time under the old law.

I would appreciate your opinion, as to my position in this matter.”

The compensation concerning which you inquire, came into existence in 1914 under favor of Section 47 of The Conservancy Act, 104, O. L. p. 39, viz. :

“Any expenses incurred in paying said bonds and interest thereon and reasonable compensation to the state treasurer for registering and paying same, shall be paid out of the other funds in the hands of the district treasurer and collected for the purpose of meeting the expenses of administration.”

Said section provided specifically that bonds issued by the district should be payable at the office of the treasurer of state and should be by him registered. This compensation was undoubtedly earned and when the General Assembly made provision for its payment, it recognized that the Act carried to the treasurer of state extra labor and added responsibility.

This particular section of The Conservancy Act took code Section 6828-47. It retained its original form and substance until December 21, 1934, when it was amended in 115 O. L. Pt. II, p. 355, but all the provisions above quoted relative to the treasurer of state were retained intact and as I am informed the different treasurers of state have drawn this compensation.

It is not necessary to indulge any statutory interpretation in order to determine whether or not the General Assembly intended that this money should be a part of the compensation of the treasurer of state, as the statute plainly says *compensation*.

The salary of the treasurer of state is fixed by Section 2248, General Code, at six thousand five hundred dollars per annum. Section 2259, General Code, provides as follows:

“No fees whatever in addition to the salaries and compensation named in the preceding sections of this chapter shall be allowed to any such officer. No additional remuneration whatever shall be given any such officer under any other title than that by which he was elected or duly appointed. The salaries provided in such sections shall be in full compensation for any and all services rendered by such officers and employees, payment of which is made from the state treasury.”

This section was originally enacted in 98 O. L., p. 368, in the year 1906 and it has not been amended or supplemented in any respect since its original enactment. But for the last sentence of this section, no officer of state could in any way draw any remuneration in addition to

his annual salary. The General Assembly certainly intended that this last sentence should have some legal significance else it would have been omitted from the section. It simply means that if the additional remuneration is payable from the state treasury, the official is not entitled to it. Then take the converse, if the General Assembly makes provision for additional remuneration and it is not payable from the state treasury, the official is entitled to it. It is only upon this theory that a state official can draw any compensation whatsoever other than his annual salary. As was said heretofore, treasurers of state have drawn this additional compensation from the conservancy district since 1914, almost a quarter of a century, the treasurer of the conservancy district has paid it under the authority of the board of directors of the conservancy district so that the allowance and payment has grown into an administrative practice to which the courts of Ohio give due consideration. It was held in the case of *State, ex rel. vs. Brown*, 121 O. S., p. 75:

“Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside, unless judicial construction makes it imperative to do so.”

This is not a local and novel expression of the law as will be evidenced by the further authorities, viz:

Industrial Com. vs. Brown, 92 O. S. 309-311; 35 Cyc. 1140; 25 R. C. L. 1043;

Norwegian Nitrogen Product Co., vs. U. S. 77 Law Ed., Advance Opinions 419, rendered Feb. 6, 1933.

I quote from the syllabus of the last above cited case, viz.:

“(5) Administrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction.

(6) Administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons, if the scope of the command is indefinite and doubtful.”

This office has dealt with this question heretofore, but not exhaustively. I find in Volume II, Opinions of the Attorney General (1918), Opinion No. 1640, at page 1587. The then treasurer of state requested the opinion. In substance, the request stated that the treasurer of state had received a check for \$300.00 from the Miami Conservancy District, the same being for six months' salary in connection with the payment of interest coupons of the district and keeping records incident

thereto. Section 47. O. L. was cited. The treasurer of state endorsed the check to W. J. Hiler, who in fact did the work. He evidently became dubious as to his right to endorse the check to Hiler and that was the substance of his request. I quote from the opinion, viz.:

“The work in connection with the payment of bonds and interest of a conservancy district is no part of the official duties of the cashier in the office of the treasurer of state. The law allows the treasurer of state extra compensation for doing this work. It does not presume that he must do it in his own proper person. He might employ for this purpose a person other than a regular member of his official force as treasurer of state. * * * The compensation paid to you is yours and is between you and the conservancy district or is between you and the State of Ohio; you may do with it as you see fit. * * *”

I further find in Volume II, Opinions of the Attorney General (1922) Opinion No. 3653, at page 869. Instead of quoting, I will merely condense this opinion. The request was concerning the right of the treasurer of state to receive the compensation provided by Section 6828-47, General Code, from the Upper Scioto Drainage and Conservancy District. The then attorney general rendered an opinion, holding as follows:

“The reasonable compensation of the Treasurer of state in this matter is one of the expenses of administration and should be paid in the event the district desires him to render the services contemplated by the conservancy act.”

Nothing has transpired since the rendition of these opinions to warrant a departure from them—so far as I am able to see.

You became an active candidate for the office of treasurer of state prior to the August primary 1936, were nominated for the office at such primary, elected at the November, 1936, general election, inducted into office on the second Monday of January, 1937, for a term of two years, and Section 6828-47, General Code, providing for your compensation from conservancy districts was in full force and effect at all such times.

On March 30, 1937, the General Assembly passed a new conservancy act and repealed Section 6828-47, which act became effective July 19, 1937. Section 6828-44a of the new act provides for the issuance of bonds by the conservancy district and that they shall be registered with the treasurer of state, Section 6828-47 of the new act provides that the principal and interest of said bonds shall be paid at the office of the treasurer of state. The section further provides:

"All moneys of a district deposited with the treasurer of state for the payment of bonds and interest shall be deposited by the treasurer of state in the name of the district in a national or state bank subject to the same conditions as are provided by law for the deposit of moneys of the State of Ohio and all interest received on such deposit shall be paid to such district."

It will be seen that the treasurer of state performs a greater service for the conservancy district and assumes a greater responsibility under the new than he did under the old, but this section contains the further provision:

"The expenses incurred in paying said bonds and interest thereon including the costs to the office of the treasurer of state for registering and paying same shall be paid out of the other funds in the hands of the district treasurer and collected for the purpose of meeting the expenses of administration and *shall be paid into the state treasury to the credit of the general revenue fund.*" (Italics, the writer's.)

We now have this picture. The statute under which the treasurer of state was allowed compensation for services rendered the district was repealed during his term of office and by the same act he was saddled with additional duties and burdened with added responsibility. The real question now makes it self-manifest, namely, can the General Assembly diminish your compensation during your term? This money you received from the conservancy district was in fact compensation, as the General Assembly so characterized it. Section 20 of Article II of the Constitution of Ohio provides:

"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."

This section of the Constitution is so clear and plain as to need no interpretation; however, should any doubt along this line be entertained, it can be readily dispelled by reading the following cases:

Holcomb, Auditor, vs. State, ex rel. 126 O. S. 498, and
State, ex rel. vs. Tracy, 128 O. S. 252.

If any possible doubt lingers in the mind as to whether or not the General Assembly meant compensation when it used the word in original Section 6828-47, General Code, surely the subsequent legislation through Amended Senate Bill 69 requiring the treasurer of state to pay the money he had hitherto received as compensation into the state treasury to the credit of the general revenue fund, would remove such doubt.

Had the General Assembly abolished the duties of the treasurer of state with references to funds of conservancy districts, then there might be some tenable argument to the effect that the treasurer of state could not continue to draw such compensation, as his office in so far as such funds were concerned, was in effect abolished, but this the General Assembly did not do. On the contrary, it increased his duties and at the same time undertook to cut off the compensation allowed for their performance, which it can not do during your term of office.

In my opinion, you are entitled to draw this compensation during your present term.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

930.

MEMBERSHIP IN ASSOCIATION OF RELIEF AGENCIES, A PRIVATE ORGANIZATION, MAY NOT BE PAID FROM PUBLIC FUNDS—FINDING MAY BE MADE AGAINST COUNTY AUDITOR AND COUNTY COMMISSIONER FOR SUCH PAYMENT.

SYLLABUS:

1. *Neither funds arising from the provision of poor relief legislation nor any public funds may be expended in payment of dues for membership in a private organization which is an association of various relief agencies though that association may render useful information, investigation services and periodicals to its members, because the power to so expend public funds is not expressly given by statute and can not be implied from any provisions of law applicable.*

2. *Where the county commissioners and the county auditor have in violation or neglect of their official duties permitted an unauthorized expenditure of public funds, a finding may be made against the county commissioners and county auditor.*