



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-426

COUNTIES:
County Board
County Treasurer

Honorable Philip G. Reinhard
State's Attorney
Winnebago County
Court House Building
Rockford, Illinois 61101

Dear Mr. Reinhard:

I have your recent letter wherein you state:

"On December 1, 1971, Governor Richard B. Ogilvie signed HB 1512, which became effective immediately.

"Section 4.4 of said bill provides:

'Compensation of deputies and employees not otherwise provided for by law shall be fixed by the treasurer subject to budgetary limitations established by the county board. This amendatory Act of 1971 does not apply to any county which is a home rule unit.'

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"Your opinion is requested as to whether the County Treasurer has the authority to raise, lower, or readjust the salaries of personnel within his office as long as the total of the individual salaries is within the budgetary limitation set by the County Board, or can the County Board still itemize the compensation for individual clerks and deputies as in the past."

House Bill 1512 (Public Act 77-1728) provides for certain amendments and additions to "AN ACT to revise the law in relation to county treasurer", approved February 25, 1874, as amended. Section 4 of House Bill 1512 provides, in part, as follows:

"* * * He [county treasurer] shall pay his deputies, assistants, and personnel to assist him in the performance of his duties. * * *"

Section 4.1 of House Bill 1512 provides as follows:

"The treasurer shall control the internal operations of his office and procure necessary equipment, materials and services to perform the duties of his office."

From the foregoing provisions of House Bill 1512, one can readily ascertain that the legislature intended to

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grant broad powers to the county treasurer with regard to the management and control of the personnel in his office.

The only limitation placed on the county treasurer's control over his deputies and employees is provided for in that part of section 4.4 of House Bill 1512 that provides that the county treasurer's power to fix the compensation of his deputies and employees is "subject to budgetary limitations established by the county board." Thus, the issue is what is meant by the term "subject to budgetary limitations."

"The primary rule in the interpretation and construction of statutes is that the intention of the legislature should be ascertained and given effect." (Certain Taxpayers v. Sheahan, 45 Ill. 2d 75, 84). Thus, in construing the term "subject to budgetary limitations" one must search for the legislative intent.

"Clearly, the legislature is not to be presumed to have done a vain or useless thing in the enacting of a statute." (Pinkstaff v. Penn Railroad Co., 31 Ill. 2d 518, 524).

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"When the legislature enacts a statute, it must be presumed that it knows the existing law and intends to make some change in the former law" (Sylvester v. Buda Co., 281 Ill. App. 139, 144). The importance prior law plays in construing a statute is pointed out by the Illinois Supreme Court as follows:

"The object in construing a statute is to ascertain and give effect to legislative intent, and to that end the whole act, the law existing prior to its passage, any changes in the law made by the act, and the apparent motive for making such changes, will be weighed and considered. (Citations omitted)."

City of Rockford v. Schultz,
296 Ill. 254, 257.

The law providing for the compensation of employees of the county treasurer, prior to the passage of House Bill 1512, had a long and complicated history. Prior to passage of House Bill 1512, the county board, at best, could set only a ceiling or maximum amount on each individual employee's salary. This was made evident by the Illinois Supreme Court's construction of Section 10 of Article X of the Illinois Constitution of 1870, which read, in part, as follows:

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"The county board, except as provided in section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; * * *." (Emphasis added)

"With the amount of their necessary clerk hire" is the portion of Section 10 of Article X that is of particular interest to us because, through this clause, the county board was granted the power to provide for the compensation of employees of the county treasurer. This clause was construed by the Supreme Court of the State of Illinois as follows:

"Although little support has been advanced for the proposition, appellants also contend that by the terms of section 10, the county board alone is authorized to fix the salaries and compensation for the employees of the county officers governed by that section. This contention is based on the language of the section which states that the county board shall fix the compensation of all county officers 'with the amount of their necessary clerk hire.' This court has held that under such provision the county board may fix the compensation of the county officers governed by the section, together with their

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necessary clerk and office expense and clerk hire, in a lump sum rather than in separate amounts for each item. (Kilgore v. People, 76 Ill. 548; Brissenden v. County of Clay, 161 Ill. 216; People ex rel. McWard v. Wabash Railroad Co., 395 Ill. 243.) The authority of the county board over the salaries of county fee officers is merely an authority to fix the amount such officer may expend for the purpose, and the making of such an allowance pursuant to the provisions of section 10 for deputy and clerk hire does not have the effect of requiring the officer to hire such employees or expend the full amount so allowed, but is merely an allowance which he may use for such purposes and which he may not exceed. To that effect is Jennings v. Fayette County, 97 Ill. 419. Whether the allowance be made to a fee officer or other county officer, it does not have the effect of giving the employee a vested right in any particular rate of salary, but merely authorizes the officer to use the allowance for salary purposes. * * *

McFarlane v. Hotz,
401 Ill. 506, 515.

Thus, the most power the county board had over a county employee's salary was to fix a ceiling on each individual's salary. The county officer did not have to pay this maximum amount; he could pay at a lower rate. The important thing was that he could not exceed this amount. See, Coles County v. Messer, 195 Ill. 540, 546.

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Section 10 of Article X was amended in 1952 to read as follows:

"The county board, except as provided in Section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses in such manner and subject to such limitations as may be prescribed by law, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the County Treasury." (Emphasis added)

In 1953, the General Assembly passed a law pursuant to the grant of power contained in the aforementioned constitutional amendment. However, this new legislation in no way changed the Supreme Court interpretation as quoted above in the McFarlane case. On the contrary, the new law adopted the same clause of Section 10 of Article X of the Illinois Constitution of 1870 that was subject to construction by the Supreme Court of Illinois in the McFarlane case.

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Section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors, with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than 1,000,000 inhabitants" (Ill. Rev. Stat., 1971, ch. 53, par. 37(a)), provides, in part, as follows:

"The County Board, in all counties of less than 1,000,000 inhabitants, shall fix the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors, with the amount of their necessary clerk hire, stationery, fuel and other expenses." (Emphasis added)

Although the Illinois Constitution of 1970 repealed Section 10 of Article X of the Illinois Constitution of 1870, as amended, this in no way affects the validity of said Section 1.

As observed by the Supreme Court in County of Stark v. County of Henry, 326 Ill. 535, 538:

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"All legislative power is vested in the General Assembly, subject to the restrictions contained in the State Constitution and Constitution of the United States. Every subject within the scope of civil government which is not within some constitutional inhibition may be acted upon by it. (Citation omitted) Counties are but political subdivisions of the State and are subject to the full control of the State acting by general law through the legislature, and the property held by counties is not private but public property."

Therefore, since House Bill 1512 must intend to change the law with regard to the county board's power to compensate employees of the county treasurer, the county board no longer has the power to fix the ceiling or maximum amount of each individual employee's salary.

Now we approach the question as to what the legislature intended by the phrase "subject to budgetary limitations." There is no definition of this term in the statute itself. The meaning of the term is not plain and obvious; it is ambiguous. "The court is only justified in construing the statute when the language used by the legislature is not clear and the real meaning of the statute is obscure and ambiguous."

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(Streator Tp. High School Dist. v. County Board, 14 Ill. App. 2d 251.) Therefore, the intention of the legislature must be deciphered by way of principles of statutory construction. Here, the phrase "subject to budgetary limitations" is capable of at least two constructions. One possible construction is that the legislature intended to grant to the county board the power to fix a minimum and maximum salary for each employee of the county treasurer's office. The other construction is that the county board can only set a lump sum amount that the county treasurer can use for personnel.

Under the construction that the county board could fix a minimum and maximum salary schedule for each individual employee of the county treasurer, the county board could declare that a particular employee of the county treasurer should receive not less than \$5,000 per year nor more than \$5,100 per year. This would be tantamount to fixing the compensation of employees of the county treasurer. In Section 4.4 of House Bill 1512, the county treasurer is expressly

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granted the power to fix the compensation of his employees. Furthermore, in Section 4.1 of House Bill 1512, the General Assembly declares that the county treasurer shall control the internal operations of his office. Thus, the intent of the legislature obviously is to grant broad powers to the county treasurer with regard to the compensation of his personnel. Any construction placed upon the various terms found within House Bill 1512 should be in harmony with the intent of the legislature.

Construing the phrase "subject to budgetary limitations" to mean the county board has power only to appropriate to the county treasurer a lump sum for personnel which the county treasurer can spend as he sees fit, would lead to a harmonious construction of the statute. It is consistent with the legislature's intention to give broad powers to the county treasurer to control and manage his office, including personnel. It will also limit the liability of the county to the lump sum appropriated to the county treasurer for personnel and protect the county against law

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suits should the county treasurer hire personnel when he did not have enough funds to pay them.

It is a familiar rule of statutory construction that if the language employed admits of two constructions, one of which makes the enactment absurd if not mischievous, while the other renders it reasonable and wholesome, the construction which leads to an absurd result should be avoided. (Kloss v. Suburban Cook Co. Sanitarium, 404 Ill. 87, 97.) This rule rejects the contention that the county board could place minimum and maximum salary schedules on each individual employee of the county treasurer.

In conclusion, I am of the opinion that the county board cannot itemize the salary of each individual employee of the county treasurer. The county board can only appropriate to the county treasurer an aggregate or lump sum amount to be used only for the compensation of employees of the county treasurer. The county treasurer can fix the rate of compensation of each of his employees. As such, he

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can raise, lower, or readjust each individual employee's
salary as he sees fit.

Very truly yours,

ATTORNEY GENERAL