

# A COURT DECISION OF GENERAL INTEREST

(Continued from first page)

The Supreme Court reversed the judgment and held the contract to be unauthorized and illegal and said: "All such contracts, whether intended to be or not, are in effect evasive and subversive of the policy of public policy and void, and incapable of ratification."

Nelson vs. Beaver County, 219 Pa. St. 320, is another case under the act. There, as here, the solicitor accepted the office at a fixed salary, but stipulated that "this salary is not to include payment for suits, litigation and special collections, such services to be recompensed when rendered by the solicitor." He endeavored to collect for services rendered the county in connection with litigation growing out of proceedings to condemn toll bridges. He was successful in the court below, but the Supreme Court reversed the judgment and held that the commissioners and solicitor were bound by the provisions of the Act of 1895, that they could not annul and set aside the statute and enter into a contract appointing the plaintiff as solicitor with compensation additional to his salary. The commissioners were without power to impose upon the county any liability other than that fixed by the act of the board. They could appoint a solicitor and fix his salary, and the appointee could limit his acceptance of the office to the salary fixed by the board. In *Fayette County vs. Commissioners*, 35 Pa. Co. Ct. Repts. 401, there was another attempt to annul the statute by agreement between the commissioners and the solicitor allowing him extra compensation for services rendered in a large number of important exceptional matters, but the court held that the solicitor accepted the burdens of the office as well as its benefits and discharged the commissioners with the \$300 paid him for extra services. It follows that the contract made by the commissioners with the solicitor, with salary and whose duties are fixed by law, to give him an additional indefinite compensation to be measured on a quantum meritis basis for services to be rendered by him as such solicitor is void, and the first and second exceptions must be sustained.

Third Exception: The auditors allowed a credit for payment to Sheriff Diefenderfer of \$29.20 for mileage in summoning jurors and \$2.00 for serving jurors on grand jurors not to attend court. The Supreme Court, in *Dorsett vs. Ticon County*, 23 Pa. St. 627, decided that such mileage and charges to the mileage credit of \$29.20 and dismissed as to the credit of \$2.00 for serving juror on grand jurors. The fourth exception challenge the payments made to the Commissioner's Clerk for traveling expenses aggregating \$61.71. These expenses were necessary incurred in attending the meetings of the joint boards of Commissioners at Sunbury, horse hire for trip to Milton bridge and other expenses, and lodging at Brush Valley Narrows. They are reasonable in amount, and are such as have been customarily paid and allowed by the auditors. If not, they should not have been allowed no matter what the expense was. If they have been, or the apparent equity in reimbursing an officer his expenditures necessarily incurred in the discharge of his duty. By the Act of May 11, 1899, the commissioners are empowered to appoint a competent person as clerk, who shall receive such salary as the commissioners shall determine. The commissioners, by the Act of May 11, 1899, are allowed traveling expenses, but there is no such provision for their clerk. He receives a stated salary, which in the absence of express legislative direction to pay him more, must be deemed to be the full measure of the officer's claim on the public moneys, and he cannot recover additional compensation for expenses incurred by him incident to the performance of his official duties. This was expressly decided in *Albright vs. County of Bedford*, 116 Pa. St. 582, where the commissioners sought to recover his expenses in traveling over the county to hold tax appeals, and attending bridge petitions etc., including hotel bills, car hire, horse hire and other expenses. His claim was denied because the compensation of Bedford's commissioners was fixed at so much per day and there was no provision for any other or different pay and no allowance for mileage, traveling expenses or boarding bills was prescribed. The fourth exception is sustained.

The auditors allowed a credit of \$16.00 to G. T. Biehl for preparing county statement and a credit of \$5.00 for collecting the Buffalo township assessment. These credits are the subject of the fifth and sixth exceptions. They are claimed to be improper credits on the ground that they were for labor performed by the clerk extra his contract, and so they would seem to be. But this would not justify their payment if the services were part of the duties of the clerk, as fixed by law, for the commissioners have no more power to limit by contract the duties of their clerk than to limit the duties of their solicitor. The question, therefore, is whether these services were part of Mr. Biehl's duty as clerk of the commissioners. By the 23rd section of the Act of 1834, P. L. 541, amended by the Act of 27 April, 1892, P. L. 234, the commissioners were required to publish annually a statement of all receipts and expenditures, by the Act of May 7, 1907, P. L. 109, this duty was placed upon the county auditors. The 22d section of the Act of 1834 was repealed by the Act of 8 May, 1909, P. L. 43, and the Act of 1907 was repealed by the Act of 13 Mar. 1909, P. L. 184. This legislation has taken the duty of publishing the county statement from the commissioners and placed it upon the auditors. The statement was made for the auditors to assist them in the discharge of their duties, and was no part of Mr. Biehl's duty as commissioner's clerk. Auditors have not only the powers expressly conferred upon them by law, but they possess by necessary implication such powers as are requisite to discharge their official duties. They can avail themselves of the services of an accountant when necessary at the expense of the county. Wyoming County Auditors, 14 Dist. Reports, 59. All necessary clerical work should be done by the county. The statement is required to be made. It is intricate and complicated, and could only be prepared by the auditors themselves at great labor and cost to the county. We are of the opinion that they were justified in employing Mr. Biehl to do this work for them at the expense of the county. The charge is very reasonable, and the bill was properly allowed.

The credit of \$5.00 for collecting the Buffalo township assessment was also properly allowed. Mr. Biehl in doing this work performed no duty which had devolved upon him as clerk. The collection should have been made by the assessor. Mr. Biehl made the corrections at the direction of the commissioners at less cost to the county than would have resulted if the work had been sent back to the assessor. That this was good business the evidence clearly shows and the auditors were right in allowing the credit. The fifth and sixth exceptions are not sustained.

The seventh, eighth and ninth exceptions are to the allowance of traveling expenses to the Commissioners, by the Act of 14 April, 1892, P. L. 157, the salaries of the commissioners shall be \$500 per annum which shall be paid in full in lieu of all other compensation, except traveling expenses necessarily incurred in the discharge of their official duties." It has been held that a statute similarly worded that hotel bills cannot be regarded as part of the traveling expenses of a commissioner. *McKean County vs. Young*, 148 Pa. St. 381. The court said: "We regard the statute as providing only for the cost of transportation; the cost of subsistence, wherever incurred is provided for by salary on a per diem compensation. The scale of living is peculiarly a personal matter, and varies so largely with the tastes and habits of individuals that a satisfactory standard cannot be well established. The law therefore leaves each to fix it by his own discretion, what at his own expense." Uncontrolled by authority we might be inclined to the view, that the traveling expenses necessarily incurred in the discharge of official duties, would include transportation, meals and lodging. For the reason that throughout the business world there are no persons who do not have been allowed. The charges for carfare are not for traveling between their homes and the commissioners' homes, but from their homes to different parts of the county and to the adjoining county of Northumberland and they are entitled to credit for them. *Mansel vs. Nicely*, 175 Pa. St. 377.

Horse hire paid to others than the commissioners is not traveling expense, but it is contrary to the policy of the law for a public official to deal with himself. A man cannot be both buyer and seller, or bailor and bailee, or actor in a transaction for another. The principle applies both to public office and private business. The transaction here is regarded as an act in violation of the law, and not binding on a party who has the right to object to it. It matters not that there is no fraud meditated, and no injury done, and it is not intended to be remedial of actual wrong, but preventive of the possibility of it. *Hara & Wallis v. Foster*, 1 Lead. Cases in Ed. page 238. So it has been held that a township supervisor may not use his own horses and car in repairing the roads, but he may receive compensation therefor. *Funk vs. Washington Twp.*, 13 Co. Ct. Repts. 335; *and Harrison Twp.*, 30 Id. 54; *Conover*, case 11 Id. 629.

We have no doubt the commissioners acted in good faith. The county has had the benefit of their ownership of horses, and it may seem as if they should not be paid for the use of them. The charges were not excessive and we are glad of it. As was said in a similar case: "It is more agreeable to the law in a case of this kind that where there might be suspicion of corruption." Mr. Winter's charges for traveling expenses include \$17.50 for use of his own horse, \$15.30 for meals and lodging, and \$2.70 for horse feed, a total of \$35.50. To this amount the seventh exception is sustained.

Mr. Spott's charges are for hire of his own horse, \$35.50, meals, \$12.50, horse feed \$1.25, a total of \$49.25. To this amount the eighth exception is sustained.

Mr. Walter's charges are for his own horse, \$7.50, meals, etc., \$10.25, a total of \$17.75. To this amount the ninth exception is sustained.

Tenth Exception: The evidence discloses that the trip to Harrisburg made by Mr. Winter and Mr. Steese, the County Treasurer, was on important business of the county, and that it was essential that Mr. Steese accompany the commissioner. His traveling expenses were \$27.50, meals, etc., \$10.25, a total of \$37.75. It is de minimis, but we are obliged to deduct therefrom the price of amount of fifty cents this exception is sustained.

Eleventh and Twelfth Exceptions: The auditors allowed a credit of \$15.00 for payment to W. L. Mertz for statement of his account as County Treasurer, and of \$24.00 for his services as auditing the auditors. Two warrants in law whatever for these charges against the county, Mertz was the retiring County Treasurer. An such Treasurer it is his duty to keep a just and true account of all moneys received and disbursed, state his accounts and produce his vouchers, which, after examination by the commissioners, should be by them laid before the county auditors for settlement according to law. Act of 15 April, 1834, P. L. 334. *Stewart*, 106 Pa. St. 563, Vol. 1, page 563.

Mr. Mertz was present at the audit. The evidence does not show that he was employed by the auditors to assist them, and the service he rendered was simply to explain the items in his own account as Treasurer. If he had properly stated should have been self-explanatory. But if not, we do not see how it could have been necessary for him to be present during the entire audit. As no person employed in the treasurer's office can hold the office of auditor, it would seem to be of questionable propriety to have the treasurer himself in the employ of the auditors. And if the treasurer is entitled to a per diem compensation for explaining his account to the auditors, the commissioners might also be paid to explain their accounts, and a procedure thus be placed upon the auditors. Whatever may have been the custom in the past, it is very clear to us that it will be more in accordance with its observance, and that there is no warrant in law for this credit. The eleventh and twelfth exceptions are sustained.

The 13th, 14th and 15th exceptions challenge the right of the retiring board of commissioners to charge for a day after their term has expired, the county statement. No statutory authority is given for these charges, and the county cannot be held responsible. This, like others above referred to, may have been an old custom. Allowance for a day is no doubt equitable and it is not questioned, but how-er meritorious a service may be where no compensation is provided for it by statute, none can be recovered. These exceptions are sustained.

Sixteenth and Seventeenth exceptions: Kelly Noe and Bevker Smith were buried as indigent soldiers, and fifty dollars were paid out of the funds of the county on each body under the provisions of the Act of April 23rd, 1909, P. L. 153. These amounts are questioned on the ground that both Noe and Smith were not indigent, but had sufficient means to defray the necessary burial expenses. Such is clearly shown to be the fact. Noe's estate was appraised at \$139.96 and \$25.88 was distributed to his heirs after the payment of his debts expenses of administration and the widow's exemption. Smith left real estate of the value \$400 to \$500 and \$50 pension money. The commissioners knew these men had property and they could have found it out. It is not shown that they were not indigent. The applications, however, were in regular form and properly authenticated. The question is whether the commissioners justified in drawing their warrants upon the proof presented, or were

they bound to go back of the applications and ascertain for themselves whether they were due or not. The Act provides for the appointment of suitable persons in each township to look after and cause to be buried at the expense of the county any honorably discharged soldier who may be leaving insufficient means to defray the necessary funeral expenses. Before assuming the charge and expense of the burial the commissioners' appointee must make careful inquiry and satisfy himself that the soldier was indigent, where upon, if he is so satisfied, he may take charge of the body and bury it, and then report to the commissioners the facts ascertained to him. Material, etc., accompanied with a statement of the expenses incurred, which report must be attested by three reputable persons of the township, known to the soldier died indigent, etc. Whereupon it becomes the duty of the commissioners to draw a warrant upon the treasurer of the county for the payment of such expenses.

It will thus be seen that the Act provided for the burial of the indigent condition of the soldier is to be ascertained. Death requires immediate action, and the statute provides for a proper case, takes charge of the body and burials it, and if three reputable persons have existed and refused to pay the report of the soldier's indigence, attest the report, the commissioners are required to issue their warrant. If the report is not sufficient, and the commissioners are obliged to search elsewhere for evidence of indigence, and if found not to be indigent, they are not bound to pay the expenses of the burial of the deceased. Who would take upon himself the responsibility of the indigent? If the report is not sufficient, the commissioners are obliged to search elsewhere for evidence of indigence, and if found not to be indigent, they are not bound to pay the expenses of the burial of the deceased. Who would take upon himself the responsibility of the indigent? 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