Opinion No. 33-691

November 22, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable Arsenio Velarde, Secy. State Board of Finance, Santa Fe, New Mexico.

*{*95}* Your letter of November 15, 1933, states that the State Board of Finance requests an opinion as to the effect of the elimination of the late Governor Seligman from the appropriation act of the appropriation for Juvenile Court Judges salaries, and whether the general law creating the Juvenile Judges amounts to a continuing appropriation which is still in effect.

Section 1 of Chapter 87, Laws of 1921, created Juvenile Courts in each county of the state, with original jurisdiction over juvenile delinquents and other matters set forth by the juvenile delinquent act, and provided that the various district judges should be the judge of the juvenile *{*96}* court in each county within their respective districts with a salary of $ 750.00 per annum each, to be paid as are salaries of the district judges. This act is still in full force and effect.

Each legislature since that time has, in accordance with said act, appropriated sufficient money for each fiscal year to pay said salaries. In 1933, the Legislature made the same appropriation, as evidenced by Subsection (4) under District Judges and District Attorneys in Section 1 of Chapter 186, Laws of 1933. This particular item was disapproved by Governor Seligman, by specific mention, at the time he approved said act on March 17, 1933. At such time other parts of said act, which is the General Appropriation Act, were by him also disapproved.

The effect of such disapproval will, of course, determine the right of the various judges to draw salaries as juvenile court judges for the present and next fiscal year, the Act of 1921 supra being unchanged by subsequent legislative action.

The office of Juvenile Court Judge having been created by the legislature, it goes, without argument, that same can be abolished by the legislature. But it is evident that the legislature has not attempted to abolish such office nor, within its constitutional rights, even attempted to reduce or abolish the salary attached to said office. While it is true, that the Governor can veto any portion of an appropriation act, the effect of such veto can have but very limited effect upon certain officers to draw the salary provided by law. Where a salary is fixed by constitution or law the courts are uniform in their holding that such salaries must be paid even in the absence of a specific appropriation by the legislature therefor, upon the theory that where such salaries are fixed, the fixing thereof constitutes a continuing appropriation therefor, until such constitution or law fixing such salary is changed in lawful or constitutional manner.

In Throop on Public Officers, Page 439, we find the following statement:

"When the compensation of an officer is fixed by constitution, the legislature cannot increase or diminish it. And it has been held, that where the constitution fixes an officer's compensation at a definite sum, it may be paid without a legislative appropriation, although another provision of the constitution declares, that no money shall be paid out of the public treasury, without an appropriation by statute; for the constitutional direction to pay the salary is an appropriation of the money to pay the same."

Also, the same author on Page 444, states:

"Where the salary of an officer is fixed by law, and the legislature appropriates a smaller sum for his salary, without any provisions declaring it to be in full for his salary, or repealing the provision fixing his salary; this is merely an insufficient appropriation not a reduction, and the officer is still entitled to the difference."

Our Supreme Court has discussed this question in two cases, the first being State vs. Sargent, 18 N.M. 272, wherein the syllabus by the court states:

1. "Where the Constitution of a state creates an office and prescribes the salary for such office, the necessity for legislative appropriation for such office is dispensed with on the ground that such provision in a state constitution is proprio vigore an appropriation."

2. "This rule has been extended to a general law fixing the salary of a public officer, and prescribing its payment at particular periods."

The second case is Dorman vs. Sargent, 20 N.M., Page 413.

Under the general rule and the decisions of our court, above cited, I am forced to the conclusion that the act of Governor Seligman in vetoing the appropriation for Juvenile Court Judges in the 1933 Appropriation Act has no effect whatsoever and that Chapter 87, Laws of 1921, being in full force and effect, contains a continuing appropriation, so that, in absence of a legislative act to reduce or abolish the salaries therein provided, *{*97}* said veto has not the effect to abolish said salaries. Consequently, said judges are entitled to receive said salaries.