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Pensions for Members of the Court of Appeals

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NOTES

PENSIONS FOR MEMBERS OF THE COURT OF APPEALS

The Kentucky legislature enacted a statute granting a pension to judges of the Court of Appeals of $5,000 per year for the rest of their lives (a) if they retired at 65 after ten years of continuous service on the court or (b) if they found it advisable to retire because of poor health after as much as sixteen years of continuous service.[1] Six members of the highest court brought action to require the Commissioner of Finance to carry out provisions of the act. Decree for petitioners below as to the two provisions set out. Held—Reversed for the state on appeal. The Kentucky Constitution must be construed as a unit and the supplementary effect of secs. 3 and 246 is that no public emoluments shall be granted except for public service, and that the governor is the only public official who can receive more than $5,000 per year. Thus, any legislative enactment which attempts to increase the compensation for judges of the Court of Appeals to an amount greater than $5,000 for each year's service is unconstitutional.[2] *Talbott, Comm. of Finance* v. *Thomas,* 286 Ky 786, 151 S. W (2d) 1 (1941).

Members of the court receive $5,000 per year while serving actively The pension in the statute is based on the previous rendition of services as a member of the court, and after retirement under either of the stated provisions no duties are imposed on those to receive the benefits of the pension.

Sec. 3 of the Kentucky Constitution provides.

"All men, when they form a social compact, are equal; and no

[1] Acts 1940, C. 131, Page 528, Legislative Enactments of the Commonwealth of Kentucky.

[2] In considering the principal case, it is to be noted that "On two occasions within the last ten years the people of this state have been called upon to change the public policy of the state as declared by the constitution in the matter of limitation of salaries of public officers. The legislature has submitted to the people for their approval at least two constitutional amendments. The first one was to do away with sec. 246 of the Constitution, and the second one was to except the judges of the Court of Appeals from its provisions. The people by their vote rejected both of the amendments, and thus reaffirmed the constitutional declaration of public policy." Talbott v. Thomas, 286 Ky. 786, 807, 151 S. W (2d) 1 (1941).

grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services",

and sec. 246

"No public officer except the governor, shall receive more than $5,000 per annum as compensation for official services "

It is apparent that the term public services as used in sec. 3 is broader than, and includes official services as set out in sec. 246. Thus, it would be possible for a situation to exist where an officer of the state who received compensation for official services would also be the recipient of additional emoluments (a) for rendering public services, which were in no way connected, either directly or indirectly, with the duties of his office.[3] For example, let us suppose that the hobby of one of the judges of the high court was scientific research, and that while serving on the court he discovered a compound which proved valuable in the curing of tobacco, which resulted in great benefits to the whole state.[4] It would seem that the legislature could properly grant emoluments to the judge for public services. Furthermore, such a grant could be made either while the judge was serving in his official capacity, or after his term on the bench had ended. The other possibility is (b) that he should receive emoluments for public service growing from the rendition of official services accruing either at the time of the rendition of the official services or subsequently

In considering the validity of the Judges' Pension Act, no consideration need be given to (a) for the statute does not attempt to award the pension to anyone for public services other than officials, and the only public services necessary to qualify as a beneficiary are the official services for which compensation has already been granted. Therefore, the statute must have been drafted on the theory that there is a public service growing out of the official services rendered, which public service may be realized at a time subsequent to the rendition of the official services. Hence, the granting of emoluments during the time the benefits were being received would be within the

[3] Talbott v. Thomas, *supra* n. 2, at 801, the majority admits, "under sec. 3, therefore, one may be awarded a public emolument for public services, whether the one performing the public service is an officer or a private citizen"

[4] Ibid. at 795.

requirements of sec. 3 of our constitution. However, it is submitted that such a grant does not come within the limits of sec. 246. In effect the majority properly said that public services accruing from official services are in reality nothing more than official services, for which the judges were paid the maximum salary while on the bench.

The minority of the court attempt to validate the statute by relying on Kentucky cases upholding pensions for firemen and policemen.[5] In neither of these cases did the total compensation exceed $5,000. Therefore an interpretation of sec. 246 was not necessary as it is in the principal case. Likewise, the Confederate pension case is not analagous to, or authority for, the dissenting view, since no official services were rendered by those to receive the pensions.[6]

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[5] Miller v Price, 282 Ky. 611, 139 S. W (2d) 450 (1940), (Validity of pension for firemen assumed), Board of Trustees v. Schupp, 223 Ky. 269, 3 S. W (2d) 606 (1928), (Validity of pension for policemen assumed).

[6] Bosworth v. Harp, 154 Ky. 559, 157 S. W 1084 (1913).