

**County Officers—Interest on Unpaid Salary.**

A county officer is not entitled to receive interest on back salary when the delay in the payment of the salary was not due to any fault of the county, but was occasioned by an election contest, the purpose of which was to determine who was entitled to the office.

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Chinook, Montana.

My dear Mr. Blackstone:

You have requested my opinion whether a county official is entitled to interest on back salary.

The facts as you state them in your letter are that Mr. Rolfe, the County Treasurer, was elected to that office at the election of 1918. The election was contested and, due to the pending contest, he did not draw any salary for the year 1919 until the end of that year. He now asks interest on the salary for 1919.

The question propounded by you is one on which we are unable to find much in the way of decisions.

Volume 7, R. C. L. Sec. 36, on page 962, states as a general rule of law the following:

"It is a general rule that in the absence of statute or express contract, the county is not liable for interest upon its obligations."

—but the single case cited to sustain the rule does not go to the point before us in the instant case.

The case of Holtzclaw v. Russ, 49 Ga. 115, which was an action brought to collect an unpaid salary of an officer, together with interest thereon, held as follows:

"Interest on an unpaid salary of such officer cannot be enforced against the county out of which the same is to be collected. We do not think the compensation provided in the statute bears interest if not paid, from the different periods of payment prescribed in the statute. We know of no instance where a salary has been held to draw interest."

Holding to the contrary, we find the case of Swann v. Turner, 23 Miss. 565, in which the court used the following language:

"In point of justice or law, no reason is perceived by the court why the government, if it were suable, ought not to pay what as a creditor, it could compel its own debtor to pay."

—and, in support of its conclusion, cited the case of Thorndyke v. The United States, 8 Mason's 4, and quoted Judge Story, who rendered the decision, as follows:

"The United States have no prerogative to claim one law upon their own contracts as creditors, and another as debtors. If as creditors, they are entitled to interest, as debtors, they are bound also to pay it."

The most recent case on the subject that we are able to find is that of State ex rel. Maltbie v. Will, 54 Wash. 453, 104 Pac. 797, in which the court held as follows:

“Where a county clerk recovered salary due in mandamus proceedings to compel the issuance of his warrant, he was entitled to recover interest on the total amount of his recovery from the date of the rejection of his claim by the county commissioners.”

In the absence of statutory authority for or against the payment of interest, I am of the opinion that the rule as laid down in *Maltbie v. Will*, supra, would be followed in a case where the courts were resorted to for the purpose of collecting the back salary. You will notice that in each of the cases above cited, interest was allowed upon judgment for the back salary after action brought to collect a rejected claim. If the County Treasurer presented a claim for the back salary, and it was allowed and paid and he accepted the warrant therefor without question, then in my opinion the doctrine of accord and satisfaction would enter into the transaction and the obligation would be extinguished. (Sec. 4954 et seq., Rev. Codes of 1907.)

At any rate the case is not parallel to *Maltbie v. Will*, supra, as the salary was held up by reason of a contest over the office and not by reason of any rejection or refusal to pay on the part of the county, and was promptly paid when the contest was determined.

Therefore, it is my opinion that your question must be answered in the negative.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.