

obtain office, and the case where a man offers to take less than the salary provided by law in order to retain office.

The Massachusetts court in *Alvord v. Collins*, 20 Pick. 418, 428, in speaking of the offer to take less than the salary allowed by law, said: "It leads to the election of incompetent and unworthy officers, and on their part to extortion and fraudulent practices to procure a remuneration for the price paid. Nor can we discover a difference in principle between the sale of an office and the disposing of it to the person who will perform its duties for the lowest compensation. In our opinion the same objection lies to both".

The legislature, in fixing certain salaries for certain county officers, doubtless had in mind fixing a salary high enough to attract to such offices the most worthy. Personal fitness should be the test of a man's right to hold office and this involves good character, intellectual ability and training, social standing and good habits. It is presumed that the salaries provided by law are necessary to obtain men of the highest personal fitness, and, in my opinion it would be contrary to public policy to permit county officers to accept less than the regular salary as it would tend to inattention to official duties, inefficiency and corruption. The salary prescribed by law is presumed to be required in order to obtain men of the highest personal fitness.

Opinion No. 110

County Officers—Salaries—Corrupt Practices Act—Public Policy.

HELD: Acceptance of less than the salary fixed by statute is contrary to public policy.

March 13, 1933.

You have submitted the following question: "Will it be against the law for the county officers to reduce their salaries?"

Attorney General L. A. Foot, in an opinion found in Volume 14 Opinions of the Attorney General, page 279, held that a candidate for public office violates the Corrupt Practices Act, if he promises or agrees that if elected he will draw only a part of the salary attached to the office, or refund into the treasury a part thereof. This was held to be in direct violation of the Corrupt Practices Act, Section 10796 R. C. M. 1921.

I am unable to see a great deal of difference in principle between the case where a man offers to take less than the salary provided by law in order to

Justice Brewer, while a member of the Supreme Court of Kansas, (afterwards a member of the Supreme Court of the United States) in the case of *State v. Elting*, 29 Kan. 397, used the following pertinent language: "Personal fitness—and in that is included moral character, intellectual ability, social standing, habits of life and political convictions—is the single test which the law will recognize. That which throws other considerations into the scale, and to that extent tends to weaken the power of personal fitness, should not be tolerated. It tends to turn away the thought of the voter from the one question which should be paramount in his mind when he deposits his ballot. It is in spirit at least, bribery, more insidious, and therefore more dangerous than the grosser form

of directly offering money to the voter”.

See also Throop on Public Officers, Section 52, where the text writer said: “In the second place quite independently of any corrupt bargain, a person appointed to an office of this description, is disabled, on grounds of public policy, from dealing with his fees because he is considered to require them to enable him to uphold the dignity and perform the duties of his office. Public policy prohibits any alienation or incumbrance of such fees”. Citing: *Liverpool v. Wright*, 1 Johns Ch. 359, 28 L. J. Ch. 868; 5 Jur. U. S. 1156; Followed in *Dublin v. Hayes*, 10 Irish R. C. L. 226.

See also Throop on Public Officers, Section 452.

It is my opinion further that an acceptance by an officer of less than the salary allowed by statute would not prevent him from recovering the balance of his salary and an agreement on his part to accept less would not be enforceable because of lack of consideration. See 46 C. J. 1027, Section 275: “The acceptance of less compensation than that established by law for the office does not estop an officer from subsequently claiming the legal compensation.” (But, see opinion No. 175, this vol.)