

Opinion No. 121**County Commissioners—Emergency—
Appropriations—County Treasurer
—Salaries.**

HELD: Where the retiring county treasurer had exceeded his appropriation for the fiscal year, and where, as a consequence, there is not enough left to pay the salaries of his successor and a deputy in full for the next three months and ten days, a public emergency exists or will shortly arise and should be met by the board as provided for by law.

March 21, 1933.

You have asked us for advice as to how the board of county commissioners of Fallon County should proceed in order to properly meet a situation produced by a former public official who disregarded to some extent the provisions of the Budget Law.

It appears from your letter that the Treasurer of Fallon County who retired on March 6, 1933, expended more of the amount appropriated by the Board of County Commissioners for the operation of the office during the fiscal year ending June 30, 1933, than he should have expended, and that as a consequence there will not be enough left to pay the salaries of his successor and a deputy in full for the next three months and ten days.

The county treasurer must keep his office open for the transaction of public business from nine in the morning

until five in the afternoon every day in the year, except holidays, and at any other time when business requires it. He is the collector of taxes for the county and state and school districts within the county and the disbursing officer of the county's and school districts' moneys. His responsibilities are great. The office is, therefore, an important one to the taxpayers and people generally, and if through some misfortune or another it should cease to function, paralysis of the public business would inevitably follow. The holder thereof is then, in all justice, not only entitled to the compensation allowed by law, but he is entitled to receive it monthly as it falls due. Indeed, in times like these it may be the only means he has of keeping body and soul together.

Where, then, may the solution of the difficulty in which the Board now finds itself by reason of the misconduct referred to above be found? Our answer is in section 6 of Chapter 148, Laws of 1929. A public emergency such as falls within the purview of the first paragraph of said section now exists or will shortly arise and should be met by the Board in the manner indicated therein. That this is so is borne out by the authorities generally. *Grout v. Gates*, 124 Atl. 76; *Mallon v. Board of Water Com'rs*, 128 S. W. 764; *State v. Clausen*, 272 Pac. 22; *Lyons v. City of Bayonne*, 130 Atl. 14; *Le Febvre v. Callaghan*, 263 Pac. 589; *Attala County v. Mississippi Tractor Co.*, 139 So. 628; *DeAngelis v. Laino*, 252 N. Y. S. 871; *Muskegon Heights v. Danigelis*, 235 N. W. 83; *Burr v. San Francisco*, 199 Pac. 1034, 17 A. L. R. 581. See also the meaning of the word "emergency" in *Words and Phrases* and in 20 C. J. 499, 500.