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## Are We Protecting Our Judges Financially?

BY STANLEY H. JOHNSON\*

At the 1947 session of our legislature, salary increases and retirement pensions for the judges of all of our courts of record were either discussed or voted upon, but none of them were enacted into law. There were many serious financial problems before this legislature, including the apparent necessity of increasing the salaries of teachers in the public schools. As the result of considerable publicity and pressure, increased pay and retirement provisions for teachers were passed. Some members of the bar put in a great deal of time and effort to procure passage of the district judges salary and retirement bills, but the total amount of lobbying was not strong. For this and other reasons, the bills failed.

As a result, according to the Denver Post, senior high school principals in Denver will receive a maximum salary of \$6,800.00, administrative officers considerably more. Our Supreme Court justices are paid \$6,500.00 a year and at the age of 65, and after ten years service, are given a lifetime pension of \$3,000.00 a year. Teachers perform a most important function, but not sufficiently grave to require their selection at the polls by the public. Probably any citizen would say that the position of a supreme court justice was of greater dignity, honor, and import to the public than that of a high school principal. These judges are elected by the voters of the state as a whole. But the public, or at least the representatives of the public, do not feel it necessary to acknowledge the value of their services to the state in a tangible way.

In some respects the work of the district court judges may be said to be of graver weight to more individuals than the decisions of the Supreme Court. They have general jurisdiction over the lives, liberty, and property of our citizens, and most of their findings are not appealed. Yet the district judges are paid only \$5,000.00 a year for a six year term, and have no retirement protection.

The county court judges have general jurisdiction over issues involving not exceeding \$2,000.00, but unlimited jurisdiction over estates of decedents, minors, and incompetents, as well as of misdemeanors. Full details of their classification and salaries under the 1945 act appeared in DICTA for May 1947, and in an article by Judge Mason in the April 1947 DICTA at page 81. The Denver county judge receives \$7,000.00, those in three other counties \$5,000.00, in six counties \$3,600.00, in five \$3,000.00, in eleven \$2,400.00, in ten \$2,100.00, in eight \$1,900.00, in eleven \$1,800.00, in six \$1,500.00, in one \$600.00, and in one \$400.00. Some of these judges, because of the scanty populations they serve, are unable to earn more, but all of them must be avail-

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able for duty the year round. They serve a four year term and have no retirement benefits.

It must be regarded as a truism that any plan submitted by the Judiciary Committee of the Colorado Bar Association to the bar for the improvement of the judicial system must include adequate salaries and retirement pensions for judges. If the Missouri plan for selection of judges should be adopted, this in itself will tend to extend the tenure of office of those judges worthy of it, and get rid of the present weakness in connection with partisan election, namely: that a capable lawyer running for judicial office must accept the risk, if elected, of failing of re-election at the end of his first term. This fact, together with the unpleasant features of political campaigns, so obviously inconsistent with a judge's character or duties, and of heavy financial contributions to party expenses, will always be a serious detriment to obtaining the best candidates. But the further factors are even greater obstacles. All of the Supreme Court justices and seven district judges must reside in Denver. On the basis of present costs it is impossible on their present salaries, for any of them without independent means to live, or maintain and educate their families, in a manner consistent with their position in society. The same is undoubtedly true of the condition of many of the judges of other judicial districts and of many county judges.

There seems to be an attitude upon the part of the public, more prevalent perhaps in the western states than elsewhere, that the mere fact of holding office is sufficient honor to compensate for the lack of material benefits. Evan Haynes, in his book on *Selection and Tenure of Judges*, published in 1944, has this to say about adequate salaries and retirement pensions for judges:

"In the first place the state, in its effort to get the best judges it can, must compete with the practice of law; and the better the man in any particular instance the keener the competition offered by private practice. Nowhere are judicial salaries even approximately equal to the incomes of the best lawyers; and apparently it is not necessary that they should be in order to attract at least a few men of the highest talents to the bench: the question of relative income is not the only factor entering into the choice; and I suppose it is safe to say that some of the non-financial considerations have unusual weight with the type of men who make excellent judges; men, that is, who have a scholarly as well as a practical interest in the law; men whose ethical instincts are unusually active; who are less interested than most able men in getting wealth and power, . . . Even with men like these, however, it is unquestionably a fact that the other attractions of the judicial career will often be insufficient to outweigh great differences in income. It is clear that more men of ability and character will be inclined toward the bench, even though

it does not offer economic attractions, if it does offer some substantial degree of economic security.

"And with respect to the men actually on the bench there is a tendency . . . for the ablest of them to leave the bench while still young enough to re-enter practice . . . When this occurs, the loss to the state is great, both because of the quality of the judge involved, and because, even though a man of equal ability is found to take his place, the invaluable experience of the retiring judge is lost.

"Another factor is this. When because of sickness or advanced age a judge's powers begin to fail, considerations of common decency discourage any action looking to his removal . . . When this happens, not only is the judge in effect retired on the bench at full pay, but his place cannot be filled; and the burden of his work is thrown upon the shoulders of his . . . brethren . . . I have not mentioned the increment to the honor and dignity of the judicial career which accompanies a proper provision for retirement."

In Colorado, under present economic conditions, with the possible exception of the present pension for Supreme Court justices, it can hardly be honestly said that there is any economic attraction to any of the judicial positions at all, unless in the few instances of district judges in sparsely settled districts where judicial work occupies only a fraction of their time, and they may engage in farming or the like. This latter factor seems to have been a persistent form of argument in the debates on salary bills for judges in the finance committees of the assembly. It is so obviously unsound and unfair to the majority of judges that one wonders why intelligent men would advance it. Yet this argument defeated the attempt in 1937 to provide a decent salary for district judges, and among others caused the defeat of the district and county judges salary and retirement bills in the 1947 legislature.

The chief justice and associate judges of the territory of Colorado, who also served as district judges, by act of Congress, were allowed \$1,800.00 a year. The territorial assembly increased this amount and provided for district judges to serve at a salary of \$2,000.00. Article V, Sec. 30 of the Colorado Constitution, adopted in 1876, left the matter to the assembly, but in 1881 this section was amended, fixing the salaries of Supreme Court justices at \$5,000.00, and of district judges at \$4,000.00. In 1929 Sec. 30 was again amended, leaving the matter of compensation to the legislature. Not until 1937 did the assembly see fit to increase the salaries of judges. At the time, although efforts were made to obtain higher salaries, they were established by enactment at their present rate: \$6,500.00 for Supreme Court justices, \$5,000.00 for district court judges.

At the time the lower rate was established, that is, in 1881, \$5,000.00 and \$4,000.00 enabled a man to live in some respectability. It has been said that Henry Ford at that time was supporting himself and his wife reasonably

well on \$40.00 a month. But the higher rate of 1937 did the judges little good, since the following year the United States Supreme Court ruled that the salaries of state judges were subject to the federal income tax. The tax on a salary of \$5,000.00 for the taxpayer and one dependent is close to \$700.00. Taking state and other taxes into consideration, therefore, the judges are receiving in buying power about half what they were receiving during the earlier part of this century and working much harder. Considered in this way, their compensation is pretty shabby.

It is worth while considering what is being paid to judges in other states of comparable size or wealth. The following table gives some comparison. In the case of those states marked with an asterisk, the figures are for 1947; for the others as of 1944 or earlier, no current figures being available:

State	Supreme Court	District Court	County Court
Arizona .....	\$ 8,500	\$ 5,500-\$4,000	None
Connecticut .....	12,000	12,000	Fees
Delaware .....	10,000	10,000	None
*Idaho .....	6,000	5,000	\$3,000-\$ 800
*Kansas .....	8,000	5,000	4,650- 1,500
Maine .....	8,000	7,500	4,000- 600
*Montana .....	7,500	6,000	None
*Nebraska .....	8,500	6,800	6,000- 900
Nevada .....	7,500	7,200- 6,000	None
*New Mexico .....	8,000	6,000	Unknown
Oregon .....	7,500	6,000- 5,000	3,000- 500
South Carolina .....	8,750	8,750	Unknown
*Utah .....	Unknown	5,500	5,000
Washington .....	7,000	6,000- 4,500	None

In the fall of 1946, just after the Judiciary Committee was organized, a committee of the Colorado Bar Association and a committee on behalf of the Colorado judges, led by Benjamin E. Sweet, began an effort to increase the salaries of district judges to \$6,000.00 and to provide for retirement benefits for them upon a graduated scale based upon years of service and age, up to a maximum of \$2,500.00. Judges J. Arthur Phelps of Pueblo, Harold H. Davies of Englewood, and Claude C. Coffin of Fort Collins, were active on behalf of the judges in obtaining information and in drafting proposed bills.

The Judiciary Committee was requested to assist in this movement, but owing to the fact that it was then but recently organized and had committed itself to a prolonged factual study before taking any views, it felt it should not sponsor the bills officially. Shortly thereafter the county judges association met and discussed salaries and as a result decided to request a twenty per cent increase over the salaries allowed in the 1945 statute. It must be borne in mind that the county judges who were in office when the 1945 salary act was

passed are not entitled to receive the salary provided therein, since no judge's salary can be increased during his term of office.

Meetings of the committee for the district judges bill were held in Denver and after the legislature assembled, Ben Sweet and Judge Phelps and others including Arthur H. Laws and Claude W. Blake, attorneys in the Senate, attempted in every way to put the bills through both houses. It was unfortunate that the judges with the help of the bar had not organized as a group with a bill covering salaries of all of the judges and also their retirement pension. The Supreme Court justices did not cause a bill to be drafted themselves but, according to what information has been received, requested Representative Ben F. Englander to draft a bill and a title was presented, but owing to his death received inadequate support. A pension bill for the purpose of providing retirement benefits for one judge no longer on the bench was submitted in connection with the Supreme Court.

The result of this piece mill presentation was most unfortunate.

Following is a history of the various bills for judges salaries and retirement pension: HB 347, the bill to increase compensation of district judges to \$6,000.00 a year passed the house on third reading with what amounted to a unanimous vote, 58 "ayes", no "nays", four excused and not voting.

HB 345 to pension district judges passed the House with 36 "ayes", 20 "nays", and six absent. There were also three members deceased at this time. Both of these bills reached the Senate Finance Committee consisting of one less than one-half of the members of the Senate. The chairman was Theodore G. Lashley of Longmont. In spite of everything that could be done by Ben Sweet and Arthur Laws, sponsors of the bill, the bills were never allowed out of this committee and finally died there.

HB 184, the bill to reduce the service period on the Supreme Court for purposes of obtaining a pension for a proportionate part of the ten year term died in the House committee on State Affairs and Reapportionment. It had passed the House on second reading and had been referred to this committee.

HB 328 to increase the salaries of Supreme Court justices from \$6,500.00 to \$8,000.00 a year died in the Rules Committee of the House.

HB 240 increasing county judges salaries and county clerks salaries approximately a flat 20 per cent died in the Rules Committee of the House. Strangely enough HB 243 providing a retirement pension for county judges passed the House but was killed in the County Affairs Committee of the Senate. The county judges salary bill on second reading before the House had been referred to the Judiciary Committee which passed it on to the Committee of the Whole with a favorable recommendation. This was as far as the bill got. There were also HB 850 to increase the salary of the juvenile court judge in Denver from \$5,000.00 to \$6,000.00 a year which was killed in the Senate Finance Committee and HB 634 to increase the salary of justices of the peace in certain counties which died in the Rules Committee of the House.

There was considerable indignation on the part of members of the bar who had given their time in support of the district judges salary and retirement bills at the fact that, although these bills had passed the House unanimously or with a substantial majority, they should be killed in the Senate Finance Committee without giving the Senate an opportunity to vote upon them as a whole. Regardless of the merits of the bills, the criticism was made that this was undemocratic and arbitrary. It was stated to the writer that Senator Lashley, the chairman, was personally hostile to any increase for salaries for judges. He stated nobody was sponsoring the bill or really seemed to care about it and that district judges could save money on \$3,000.00 a year. It must be borne in mind however that the assembly was faced with considerable financial problems and a great many bills required more attention than in the average session. The old feeling that many of the district judges did not earn their present pay cropped up again. If this attitude is continually going to prevent reasonable salaries for the judges who are undoubtedly earning more than they now receive, something should be done to graduate the salaries in accordance with the amount of time spent by the judges.

The secretary of the Judiciary Committee wrote letters to the chairmen of the Finance Committees of both houses, including Senator Lashley, asking to receive their views and the reason why the bills were killed but no reply has ever been received. The matter of salary and retirement bills for judges is so important to the welfare of the judiciary of this state that before the next session a concerted effort should be made by the bar to enlist public support to see that our judges are properly paid for what they do and are given security to protect them for the sacrifices they have made in relinquishing their practice in order to carry on public work. We cannot expect intelligent, able, and honest men to accept positions of this kind if the public itself does not respect those positions and the work done by the incumbents sufficiently to reimburse them adequately for their work.

## **Amendments To The Colorado Rules of Civil Procedure**

BY PHILIP S. VAN CISE\*

The persons mentioned herein are the lawyers' Rules Committee of the Supreme Court of Colorado. From time to time we have had communications from different lawyers about suggestions as to amendments of the present rules but the members of the committee have been so busy individually that they have not had time to properly study them. However on September 1, 1947, amendments to 33 of the present federal rules will go into effect. Some of these are only a few words; some of them are quite lengthy. In order properly to study them and determine whether or not recommendations should be

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