

JEFFERSON COUNTY BRIDGE DISTRICT.

BROCKMAN v. BOARD OF DIRECTORS OF JEFFERSON COUNTY
BRIDGE DISTRICT.

4-3238

Opinion delivered December 11, 1933.

1. OFFICERS—INCREASE OR DIMINUTION OF SALARY.—Constitution, art. 19, § 11, providing that the salary of a prosecuting attorney established by law shall not be increased or diminished during his term of office, *held* not to affect compensation not definite and fixed, but uncertain in amount as consisting in fees or percentages.
2. OFFICERS—INCREASE OR DIMINUTION OF SALARY.—Acts 1933, No. 274, repealing so much of Acts 1921, No. 121, as provided that the prosecuting attorney, acting as attorney for a certain bridge district, should receive a reasonable fee to be taxed as costs, *held* not unconstitutional as diminishing his salary during the term of his office, since such fees were not part of his salary.
3. STATUTES—REPEAL OF PART OF LOCAL ACT.—Amendment 14 to the Constitution, forbidding the amendment, but permitting the repeal, of local or special acts, was not violated by Acts 1933, No. 274, repealing so much of Acts 1921, No. 121, as provided a fee for the prosecuting attorney's services as attorney for a certain bridge district.
4. STATUTES—REPEAL.—A statute may be repealed either by express terms or by necessary implication, the question being one of legislative intent.
5. STATUTES—EXPRESS REPEAL.—An express repeal of a statute is the abrogation or annulment of a previously existing law by enactment of a subsequent statute declaring that the former law shall be revoked or annulled.
6. STATUTES—REPEAL BY OMISSION.—So much of a section or act as is omitted from an amendatory act is repealed, as where a statute re-enacted a portion of a statute which made the prosecuting attorney the attorney for a county bridge district repealed an omitted portion of the prior statute which allowed compensation for such services.
7. OFFICERS—COMPENSATION.—Where an additional duty is prescribed or imposed upon an officer without provision for compensation, he is not relieved from performance of such duty, it being presumed that his salary or fees already provided are sufficient.

Appeal from Jefferson Chancery Court; *Harvey R. Lucas*, Chancellor; affirmed.

STATEMENT BY THE COURT.

The Jefferson County Bridge District was organized under a special act of the Legislature of the year 1911,

and has since been a going concern. After the organization of the district a bridge across the Arkansas River near Pine Bluff was built and a tax levied against all the lands in Jefferson County in accordance with the statute to pay the outstanding indebtedness arising from the sale of bonds for the construction of said bridge. A large part of the indebtedness is still unpaid, and during the years 1929 and 1930 the land set out and described in the complaint filed in the Jefferson Chancery Court was returned delinquent by the collector of Jefferson County, and properly certified by the county clerk, who is under the statute, secretary for the bridge district.

The Legislature, by act 121 of 1921, provided that the prosecuting attorney of Jefferson County should act as attorney for the bridge district. That, in all suits pending or hereafter filed to force the collection of delinquent taxes due the district, the court before whom said suits are filed shall fix a reasonable sum to be taxed against each tract of land as attorney's fee in said district.

In pursuance to the resolution duly passed by the board of directors of the district, directing the prosecuting attorney to file this suit, he, the appellant herein, filed the suit on April 6, 1933, and the clerk of the court executed the notice as provided by law for the purpose of collecting the delinquent tax due the district on said lands.

Thereafter, the appellant filed an intervention in said cause asking the court to fix a reasonable sum to be taxed as a part of the costs against each tract of land as attorney's fees herein.

The Legislature of 1933 passed act 274, the first section of which reads as follows: "That §.1 of act 121 of the Special Acts of the General Assembly of the State of Arkansas, approved February 15, 1921, be amended so as to read as follows:

"The prosecuting attorney of Jefferson County is hereby made attorney for the Jefferson County Bridge District, and it shall be the duty of said attorney to do and perform all and singular the duties incumbent on the attorney for the Jefferson County Bridge District, and

JEFFERSON COUNTY BRIDGE DISTRICT.

said services shall be performed by the prosecuting attorney of said county without additional salary to that now provided by law for the prosecuting attorney of Jefferson County'."

The chancellor denied the intervener's prayer to fix a fee and held that act 274 of the General Assembly of the year 1933 is valid, and that the appellant, as attorney for the Jefferson County Bridge District, was not entitled to a fee for representing the district in this suit on the ground that act 274 of 1933 repealed act 121 of 1921, and rendered a decree against appellant, from which comes this appeal.

E. W. Brockman, for appellant.

Bridges, McGaughey & Bridges, for appellee.

KIRBY, J., (after stating the facts). The appellant seeks to collect fees against certain delinquent lands of the district embraced in this suit and have them taxed against each particular tract described therein as costs for his compensation for the collection of the delinquent taxes for 1929 and 1930 as provided in said act 121 of 1921.

He alleged that said act making provision for the collection of delinquent taxes was enacted long prior to the adoption of amendment No. 12 to the Constitution, prohibiting the passage of local acts by the Legislature, and that by its terms he was entitled to have the court fix a reasonable sum to be taxed as attorney's fees against each tract of land set out in the complaint; and that said act of the Legislature, No. 274 of 1933, entitled: "An Act to Amend § 1 of act 121 of the Special Acts of the General Assembly of the State of Arkansas, approved February 1, 1921," left out of the provisions of said act all reference to the collection fees for the service, and instead provided: "And it shall be the duty of said attorney to do and perform all and singular the duties incumbent on the attorney for the Jefferson County Bridge District, and said service shall be performed by the prosecuting attorney of said county without additional salary to that now provided by law for the prosecuting attorney of Jefferson County."

It is insisted that said § 1 of act 274 of 1933, is void as being in conflict with article 19, § 11, of the Constitution in that it endeavors to diminish the salary of the prosecuting attorney during his term of office, and further is in conflict with Amendment No. 12 of the Constitution, attempting to amend a special act of the Legislature.

The court made the following declaration of law: "The intervention in this case as presented by E. W. Brockman, as prosecuting attorney of Jefferson County and made attorney for the Jefferson County Bridge District under act No. 121 of the General Assembly for the year 1921, presents the issue as to whether act No. 274 of the Acts of the General Assembly for the year 1933, amended or repealed said act No. 121 for the year 1921. This court is not passing on any phase of the case as to the justness of the act, the amount of work to be done, or fees fixed therefor, but solely on the question of the constitutionality of act No. 274 of the Acts of 1933. Since the adoption of the constitutional amendment which prohibits the Legislature from passing a local or special act, the Legislature cannot amend a local act, but it can repeal a local act, either entirely or only some particular part of it."

Article 19, § 11, of the Constitution provides that prosecuting attorneys, with other specified State officials, "shall each receive a salary, to be established by law, which shall not be increased or diminished during their respective terms, nor shall any of them, except the prosecuting attorneys, * * * receive to his own use any fees, etc." Under the statute a salary is provided for prosecuting attorneys which can be said within the meaning of the above section to be established by law, and said section also prohibits the increasing or diminishing of the salary during the respective terms of office. The prohibition, however, is to the salary only, and does not affect one whose compensation is not definite and fixed, but is uncertain in amount and consists in fees or percentages. 46 C. J. 1024, and cases cited in footnote 55. See also, *State v. Grimes*, 7 Wash. 445, 35 Pac. 361, where a like provision of the Constitution of Washington re-

ceived such construction. No compensation had been fixed for the services herein before the act of 1933 reduced the compensation, and: "A constitutional provision prohibiting a change of compensation after an election or appointment during the term of an office does not apply where, prior to such time, no salary or compensation had been fixed for the office." 46 C. J. 1025.

Said act 274 of 1933 is not in conflict with article 19, § 11, of the Constitution. It is obvious that the framers of the Constitution had in mind only the stipulated salaries of the public officials mentioned, prohibiting their being increased or decreased during their respective terms of office, and not the addition or deduction of some fee allowed for a particular service. *Purnell v. Mann*, 105 Ky. 87, 48 S. W. 407.

Neither does said act 274 of 1933, conflict with said Amendment No. 12 to the Constitution, which reads as follows: "The General Assembly shall not pass any local or special act. This amendment shall not prohibit the repeal of local or special acts." Said amendment expressly provides that it shall not prohibit the repeal of local or special acts.

"There are two ways of repealing a statute or part thereof; one is by express terms, the other by necessary implication. The question of repeal is one of intent, and must be solved by determining as near as may be the intent of the Legislature.

"An express repeal is the abrogation or annulment of a previously existing law by the enactment of a subsequent statute which declared that the former law shall be revoked or abrogated." 59 C. J., § 502.

The Constitution provides the method for amending a law and requires that whatever part thereof is to be retained "shall be re-enacted and published at length." Article 5, § 23. It is invariably held all of the section or law that is omitted and not re-enacted in the provisions of the amendatory act as proposed, is repealed. *Applegate's Constitution of Arkansas Annotated*, article 5, § 23, p. 47, and cases cited.

This court has already held, construing Amendment No. 12 to the Constitution, that the Legislature has the right to repeal a local act entirely or only some particular part of it. *Gregory v. Cockrell*, 179 Ark. 719, 18 S. W. (2d) 362.

The method adopted here by re-enacting the particular part of the act proposed to be retained, effected only the repeal of that part omitted, and was within the competency of the Legislature, as correctly held by the chancellor herein.

If an additional duty is prescribed or imposed upon a public official without any provision for any further salary or compensation paid, it does not relieve him from the performance of such duty, it being presumed that the Legislature concluded that his salary or fees already provided are sufficient for the additional service required to be rendered.

We find no error in the record, and the decree is affirmed.
