Report
on
Judicial Pensions
by
Commission on Judicial Administration

The subject of judicial pensions was recently considered at length by the Commission to Study the Judiciary of Maryland, headed by Edward H. Burke, in its report to Governor McKeldin dated January, 1953. This Commission recommends approval of the conclusions reached by the Burke Commission for the reasons detailed on pages 6 to 8 of its printed report. We have considered the situation carefully, and we have concluded that the recommendations made by the Burke Commission are still sound, and that the bill to carry its recommendations into effect, with perhaps one change, should be introduced in the General Assembly with the approval of this Commission.

In brief, the recommendations of the Burke Commission, and its bill, provided that the present retirement ages (optional at sixty and mandatory at seventy) be retained; that the present annual judicial pensions of $300 for each year of service up to twenty years be increased to $450 for each year of service up to twenty years, so that the maximum pension for retired nisi prius judges would be increased from $6,000 to $9,000 per year; and also that there be an additional allowance for retired appellate judges of $100 per year for each year of service up to twenty years on the Court of Appeals, and a maximum total pension for retired appellate judges of $11,000 per year, the pensions in all cases to apply to elected judges.

The Burke Commission considered a number of pension proposals (p. 49-74 of the Report): (1) a straight contributory pension integrated with the employees retirement system, (2) increases in the annual and maximum provisions of the present non-contributory system, (3) retention of the existing maximum pension of $6,000 annually, but with a shorter period within which to reach the maximum, based on an increase in the amount for each year's service, (4) an optional contributory system in addition to a non-contributory system, either as presently constituted or as otherwise modified, (5) pension benefits to widows of retired judges, and (6) a contributory system, either in whole or part, accompanied by increases in judicial salaries sufficient to cover the cost of contributions.

The Burke Commission finally discarded all of these proposals, except the one (No. 2) retaining the present non-contributory system and increasing the pension from $300 per year of service in the trial courts to $450 per year, up to a maximum of $9,000 per year for twenty years of service, instead of the present maximum of $6,000; and an increase from $300 per year to $550 per year, up to a maximum of $11,000 for twenty years of service on the Court of Appeals. The existing system was enacted in 1943, it having been drafted by Hon. Philip B. Perlman, chairman of the Commission's subcommittee on judicial pensions with the approval of the Maryland State Bar Association. That Association still favors the plan, and in 1950 adopted a resolution approving the increases in the amounts subsequently recommended by the Burke Commission, and which we herein approve. The bill failed of passage in subsequent sessions of the General Assembly, although in 1952 it had the support of the Legislative Council.

The recent pension bills contained a provision limiting retired judges who resume the active practice of law to a maximum pension of $6,000 per year. We are aware of the complaints which have been made in some of the counties, where the total amount of legal business is comparatively small, over competition from retired judges, who, although benefitting financially from pension provisions, compete with the active practitioners in their localities. However, we do not believe that the complaints are well grounded in the case of judges who are compelled to retire at the age of seventy. We are inclined to believe that the objection has greater force when applied to judges who voluntarily retire after reaching the age of sixty. We recommend, therefore, that the bill as approved by the Burke Commission be amended so as to provide that the increases shall not take effect in the case of judges who voluntarily retire after reaching the age of sixty and who thereafter engage in the practice of law, unless such retired judges subsequently relinquish the practice of law, and give formal notification in writing of that fact to the Governor and the State Comptroller of Maryland. This suggestion seems to discriminate between retired judges who resume the practice of law before the age of seventy, and those who resume practice after reaching that age, but we believe that the difficulties of resuming practice after the age of seventy are so much greater than at an earlier age as to minimize the difference in treatment.

We debated the advisability of recommending that the entire pension plan for judges be abandoned in favor of a modified version of the federal system, under which the judges would be automatically retired on full pay at the age of seventy, and thereafter be available for limited service on the bench. We think such a plan has many features of advantage to the State, and would eliminate existing grounds for criticism. We hope that it will be considered again in the near future.

We urge approval of an act providing pensions for the widows of

elected judges who die in service and for the widows of such retired judges. We think such an act will be of greater value to the judges than increases in annual compensation. Acts providing pensions for widows of judges and retired judges have constantly been before Congress since the sudden deaths in service of Chief Justice Vinson and Association Justice Rutledge of the Supreme Court. We have had an illustration of such an occurrence in the recent death in service of Judge Joseph D. Nish, of the Fourth Circuit. What may seem to some to be generous provisions for pensions are really no provisions at all in the case of judges who die in service, and in the case of those who die shortly after retirement. Inasmuch as the average lives of females is but three or four years longer than those of males, pension provisions for widows would not greatly increase the expense to the State. Such provisions, however, would add greatly to the inducement to the ablest and best qualified members of the bar to give up their careers as active practitioners for service on the bench. It would provide a measure of security for the families of those judges who lack substantial means of their own. Since the absence of such security is a source of worry to many of the judges, it would follow that the enactment of legislation providing pensions for widows of judges and retired judges would assure the State of better service from those whose fears for the future welfare of their dependents would be removed. We suggest the enactment of a law giving widows of elected judges and retired judges at least one-half of the pensions such deceased judges earned by reason of length of service, and one-half of the pensions which the retired judges were receiving at the time of death, or to which they would have become subsequently entitled to receive. We recommend that such pensions be paid to the widows for life or until remarriage. We also recommend that such a law contain provisions limiting its application to the instances of a widow who had been married to a deceased judge for not less than three years prior to his death, and, in the case of a retired judge,

had been married to him at least three years prior to his retirement. The bill on this subject drafted for the Legislative Council in 1952 seems to us to have been inadequate in several important particulars, chief among which was the absence of any provision for the widows of judges who die in active service.

The Commission is grateful to the members of its subcommittee on Judicial Pensions. They are J. Douglas Bradshaw, Edward A. Smith and Philip B. Perlman.

COMMISSION ON JUDICIAL ADMINISTRATION

By

Chairman