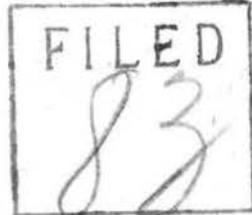


PROSECUTING ATTORNEYS:

Prosecuting attorney allowed reimbursement for necessary stenographic and clerical help from County, in reasonable and necessary amounts.

April 24, 1936.

4-28



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge receipt of your letter in which you request the opinion of this Department. Your letter is as follows:

"In the course of our audits of county officials we find that in several cases the Prosecuting Attorney has been allowed deputies or assistance of clerical hire, the salaries of which have been paid out of the county revenue upon warrants issued by the County Courts.

"We are unable to find any statutes authorizing this expenditure of county money.

"I would like an opinion from your office as to whether a County Court can legally pay clerical help or deputy hire of the Prosecuting Attorney."

Your question is, May a county court legally pay clerical help or deputy hire of the prosecuting attorney? We shall assume, in your inquiry you have reference to those counties in which there is no specific statutory authority for deputies or stenographers and wherein a stated salary is not allowed by statute for such deputies and stenographers.

At the outset we wish to state that the courts of this State have adopted a liberal policy in paying the necessary expenses of public officers, to the end that they be not required to pay out of their own pockets such expenses of such offices in performing their public duties .

The prosecuting attorney has many and complex duties to perform, being the chief law enforcement officer of the county and also the legal advisor of the county court and the public officers of the county relative to public business and to attend to all legal matters in which the county is involved, all of which necessitates the drafting of complaints, informations, indictments, petitions and other court papers and contracts.

A stenographer, no doubt, is the clerical help referred to in your letter. A stenographer in recent years has become a necessary adjunct to a law office and the public business may be expedited and dispatched more quickly by the use of stenographic help in an office.

The courts in Missouri have adopted a strict rule as to the payment of salaries, fees or compensation to public officers and the officer must put his finger upon the statute authorizing the payment of same. The courts have adopted the common law rule, that is, that an officer is presumed to render his services gratuitously unless there is specific statutory authority for the payment of same. *King v. Riverland Levee District*, 279 S. W. 195, 196.

With reference to the payment of expenses paid out or necessarily incurred by the officer in the performance of his official duties, we find that the courts have adopted a more liberal rule and permit the officer to be reimbursed for necessary outlays for expenses out of the public treasury. The courts have correctly adopted this rule for if an officer were compelled to pay the expenses of the operation of his office and other expenses out of his salary or fees, the public business to some extent would be neglected. There have been several cases in our appellate courts relative to the expenses and the purchasing of equipment necessary in the operation of public offices. In each case we have found that the courts have adopted this liberal policy and made the payment of certain expenses a charge against the public treasury, although no specific statutory authority could be found for same.

In the case of Saylor v. Nodaway County, 159 Mo. 520, under a statute providing that the necessary expenses incurred by the probate court "for books, stationery, furniture, fuel and other necessaries shall be paid by the county," the court held that the county court was compelled to pay the probate judge for postage stamps used in the discharge of his official duties.

In the case of Ewing v. Vernon County, 216 Mo. 681, l. c. 692, involving what the recorder may have for equipment and expenses, the court said:

"There is not a word in the chapter relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it, but when we read other provisions of the general statutes relating to building a court house and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish."

In the companion case of Ewing v. Vernon County, 216 Mo. 696, the court held that the sheriff's office is entitled to janitor service at the expense of the county and it is the duty of the county court to reimburse the sheriff for reasonable outlays for such services.

In Buchanan v. Ralls County, 283 Mo. 10; 222 S. W. 1002, the Supreme Court held that it was the duty of the county to furnish the county treasurer with suitable office space, heat, lights and janitor service.

In 46 Corpus Juris, p. 1018, it is said:

"But where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make the expenditure out of his own funds and have reimbursement therefor, and where a public duty is demanded of an officer without provision for any compensation, the expense must be borne by the public for whose benefit it is done."

April 24, 1936.

In all of these cases the statutes have not been explicit as to what should be furnished each county official in the way of equipment and expenses, yet the courts have adopted liberal views in the interest of efficiency of the offices and the officers in the performance of their public duties.

In this day business is transacted by modern means and in modern ways, and we can see no good reason why public business should not be conducted in the same way and in keeping with the times. It is almost universal that all of the legal papers mentioned above are prepared on the typewriter and the typewriter is essential in the present day office, and a typewriter without an operator is useless. It is not one of the qualifications of a prosecuting attorney that he be a stenographer or typist.

It is our opinion that a deputy or an assistant in the office of a prosecuting attorney is not entitled to a salary payable out of the county treasury in the absence of statutory authority therefor. However, it is our opinion that if it is necessary for the prosecuting attorney to hire a stenographer or other clerical assistance to perform certain necessary duties in his office, and he thereby is compelled to pay such expenses out of his pocket, he is entitled to reimbursement from the county in reasonable and necessary amounts.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney-General.

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