

FEEES: SALARIES: Not entitled to mileage in addition to  
SHERIFF AND DEPUTIES: salary in the performance of their of-  
CONSTABLES AND DEPUTIES: ficial duties.  
ST. LOUIS COUNTY:

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February 18, 1941

Mr. Walter E. Miller, Clerk  
St. Louis County Court  
Clayton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of January 18, 1941, which reads as follows:

"The County Court of St. Louis County has asked me to request your office for an opinion relative to the construction of Section 7, Page 681, Laws of Missouri, 1939.

"St. Louis County comes under the classification of counties having a population of not less than 200,000 inhabitants, and less than 400,000 inhabitants.

"The Sheriff has appointed his deputies, and the County Court has found the need for the appointment of these deputies, but a question arises as to the determination of the amount of the salaries to be paid them. The deputies, in performing their duties, must use automobiles and do a great deal of traveling, and are put to expense in making investigations and performing the duties of their office.

"Can the County Court set a definite amount as salary for each deputy and also an additional definite amount for the expense of the operation of their automobiles and other expenses incident to the performance of their duties.

"The County Court request an opinion on another matter. This relates to the salaries of the constables and their deputies. Taking into consideration Section 11777, page 683, Laws of Missouri, 1939, has the County Court any authority to provide compensation for the constables and deputy constables for the expense which they incur by reason of the use of their automobiles and other expense incidental to the performance of their duties."

We shall first answer your request:

"Can the County Court set a definite amount as salary for each deputy and also an additional definite amount for the expense of the operation of their automobiles and other expenses incident to the performance of their duties."

The Sixtieth General Assembly enacted a new provision establishing the salary and fees for sheriffs, other officers and their deputies in counties the size of St. Louis County. This act will be found on pages 679-683, inclusive, Laws of 1939. This act does not specifically repeal any former act.

Under Section 1, page 680, Laws of 1939, the legislature specifically designated a salary of Eight Thousand Seven Hundred fifty (\$8750.00) Dollars for the sheriff in all counties in the state having a population of not less

than two hundred thousand (200,000) or more than four hundred thousand (400,000), according to the last Federal Decennial Census:

"In all counties in this state which now have or may hereafter have a population of not less than 200,000 inhabitants and less than 400,000 inhabitants according to the last Federal decennial census, the following salaries shall be paid the hereinafter named officers, beginning with the term of office following the term for which the incumbent has been elected, or is serving at the time of the effective date of this act, to-wit; Clerk of the County Court, \$6750.00 per annum; Collector of Revenue \$8750.00 per annum; County Treasurer, \$6750.00 per annum; Recorder of Deeds, \$6750.00 per annum; Circuit Clerk, \$6750.00 per annum; Sheriff, \$8750.00 per annum; Coroner, \$5000.00 per annum; Assessor, \$8750.00 per annum."

Section 7, page 681, Laws of 1939, authorizes the appointment of deputies by the sheriff to properly perform the duties of his office. The salary of these deputies shall be determined by the county court. There is no specific limitation on the amount of salary such deputies shall receive. This is a matter within the discretion of the county court:

"It shall be the duty of the clerk of the county court, the assessor, the collector of the revenue, the county treasurer, the recorder of deeds, the sheriff of the county and the coroner to appoint deputies and clerks to properly perform the duties of their offices. The salary of the deputies

and clerks shall be determined by the county court of said county and made a matter of need by said court and paid out of the county treasury. The circuit clerk shall appoint his deputies and assistants and fix their salary with the approval of the circuit court and such deputies and assistants shall be paid out of the county treasury."

Now we come to the question--are the sheriff's deputies entitled to mileage while acting in the performance of their duties. This statute only refers to what salaries said deputies may receive.

Corpus Juris lays down the general principle regarding the right to compensation for expenses incurred by an officer. The officer claiming such expenses must place his finger upon the statute or Constitution authorizing such expenses. 46 Corpus Juris, page 1018, Section 246, in part, reads as follows:

"The right of an officer to compensation for expenses incurred by him in the performance of an official duty must be found in a provision of the constitution or a statute conferring it either directly or by necessary implication, and the officer cannot recover compensation additional to the compensation fixed by statute for such expenses. \* \* \* \* \*"

In State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, l. c. 610, 611, there was an appropriation for expenses of warehouse commissioner and grain inspection department. Money for expenses included "traveling expenses." The court, in holding this, did not include trips to Washington, D. C. After examining the act creating the department and its duties, said:

"We do not mean to say that the expression 'travel within the State' is to be regarded as a legal fetich, or that such a requirement is to be wholly decisive of the liability of the State to pay traveling expenses. It so occurs here that the statutory duties of the warehouse commissioner, as at present defined, are such as in the very nature thereof cannot entail travel outside of the State. If, however, the statutory duties of an officer of this State be such as require, or entail in their proper performance, travel beyond the borders of this State, then such travel is as much a necessary expense, for which the State would be liable, as is travel within the State. (State ex rel. Lamkin v. Hackmann, 275 Mo. 47, 204 S. W. 513).

"If so it be that the crying exigencies brought about by a World War unforeseen and undreamed of when the act in question was passed had so altered national and domestic conditions when the trips in question were made as to make it absolutely necessary and praiseworthy for the relator to incur the expense in controversy in the first and second counts, we are yet forced, however much the situation may appeal to our personal sympathies to relegate this phase of the case to the Legislature. Our duty in the premises is done when we are unable to lay our finger on any existing statute which, when construed under the rules laid down, supra, will justify us in adjudging payment. We think the demurrer should be sustained and that our writ, so far as it went to counts one and two, should be quashed."

In Nodaway County v. Kidder, 129 S. W. (2d) 857, 1. c. 860, the Supreme Court said:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

Also, in the above case the court held that the general rule is that the rendition of services by a public officer is deemed to be gratuitous unless compensation is provided by statute:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing the same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656."

Also, it has been often held by the Supreme Court that the right to compensation by statute must be strictly construed against the officer. In Ward v. Christian County, 111 S. W. (2d) 182, 1. c. 183, the court said:

"It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which

is claimed to confer such right must be strictly construed.' State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S. W. 655, 656. \* \* \* \* \*

Another cardinal rule of construction is that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein.

In State ex rel. Wabash Ry. Co. et al v. Shain et al., 106 S. W. (2d) 898, l. c. 899-900, the Supreme Court in banc said:

"\* \* \* \* The cardinal rule to be followed in the construction of statutes is to arrive at the legislative intent. 'Rules for the interpretation of statutes are only intended to aid in ascertaining the legislative intent, "and not for the purpose of controlling the intention or of confining the operation of the statute within narrower limits than was intended by the lawmaker." Sutherland on Statutory Const., section 279. If the intention is clearly expressed, and the language used is without ambiguity, all technical rules of interpretation should be rejected.'"

The Sixtieth General Assembly, in enacting Section 9, page 682, Laws of 1939 of the same act, specifically prohibited the deputies receiving mileage or other expenses:

"All the salaries mentioned in Section 1 hereinabove shall be in full of all services rendered by virtue of said officers and said annual salaries shall be paid in equal monthly installments out of the county treasury of said county.

None of the officers or their employees hereinabove enumerated shall retain any fees, fines, costs, commissions, penalties, or charges collected by virtue of their office under the laws of this state but all the fees, fines, costs, commissions, penalties or charges shall be paid into the county treasury and they shall be the property of said county. \* \* \* \* \*  
(Underscoring ours).

The above provision obviously was intended to prohibit deputies from receiving any expenses whatsoever.

In State ex rel. Ben Selleck et al., Relators, v. John P. Gordon, State Auditor, 254 Mo. 471, the court held the sheriff was not entitled to certain fees for mileage in subpoenaing witnesses for the reason the statute providing for such mileage was enacted after the sheriff began his term of office and, therefore, it was in violation of Article XIV, Section 8, Missouri Constitution, which provides the compensation or fees of no officer shall be increased during his term of office. This decision construes mileage as fees. The court said, page 476:

"The only items of costs contained in said fee bill which are attacked on the ground that they are illegal and not properly taxable as items of cost in the cause are the two items of \$11 and \$12.25, claimed by sheriff Roland as fees for mileage in subpoenaing witnesses. Sheriff Roland's four-year term of office began about January 1, 1909. The statute authorizing sheriffs to receive fees for mileage in subpoenaing witnesses in criminal cases was first enacted in 1909 and after Sheriff Roland had begun his term of office. (Laws 1909, p. 505.) The sheriff was therefore not entitled to these fees for the reason that, if allowed, they would amount to an increase of his fees during his term of office. (Constitution of Missouri, art. 14, sec. 8.)

"It is therefore ordered that a per-emptory writ of mandamus issue commanding the State Auditor to audit and allow all items of said fee bill except the two items for the sheriff's mileage."

Furthermore, another rule of construction is that the title of an act may be considered as a guide to the legislative intent if the language of the act is ambiguous.

In *Bowers v. Missouri Mut. Ass'n.*, 62 S. W. (2d) 1058, 1. cl. 1063, the court said:

"\* \* \* Where certain terms of a statute are ambiguous, we are at liberty to go to the title of the act as a clue or guide to the intention of the Legislature. *Straughan v. Meyers*, 268 Mo. 580, 588, 187 S. W. 1159; *State ex rel. Bixby v. City of St. Louis*, 241 Mo. 231, 248, 145 S. W. 801. \* \* \* \* \*"

Also, in *re Graves*, 30 S. W. (2d) 149, 1. c. 151-152, the court said:

"We are confirmed in this conclusion by the application of another rule of statutory construction. When the language of a statute is ambiguous, recourse may be had to the title in order to ascertain the true meaning of the act. 25 R. C. L. p. 1031, section 267; *Straughan v. Meyers*, 268 Mo. 580, 588, 187 S. W. 1159; *Strottman v. Railroad*, 211 Mo. 227, 252, 109 S. W. 769; *State ex rel. v. Fort*, 210 Mo. 512, 527, 109 S. W. 737. \* \* \* \* \*"

While we can see no ambiguity in this act pertaining to deputies receiving mileage in the performance of their duties, it is unnecessary to look to the title. However, if this act should be ambiguous, which we do not contend, the title supports our opinion that the deputies shall not receive such expenses. The title reads in part:

"and providing for all salaries of county officers and employees to be in full and in lieu of all other fees, commissions and emoluments, \* \* \* \*"

This provision obviously determines the question in that it provides that all county officers and employees shall receive a salary to be in full in lieu of all other fees, commissions and emoluments, which leaves no room for doubt that the Sixtieth General Assembly fully intended to place these deputies upon a salary basis in lieu of everything else.

Therefore, it is the opinion of this department that deputies appointed by the sheriff in St. Louis County are entitled to a salary as allowed by the county court but are not entitled to mileage in the performance of their official duties.

Your second request for an opinion reads as follows:

"The County Court request an opinion on another matter. This relates to the salaries of the constables and their deputies. Taking into consideration Section 11777, page 683, Laws of Missouri, 1939, has the County Court any authority to provide compensation for the constables and deputy constables for the expense which they incur by reason of the use of their automobiles and other expense incidental to the performance of their duties."

In answering this inquiry, the same rules of construction are applicable as hereinabove referred to.

Section 11777 of the Revised Statutes of Missouri 1929, was repealed by the Sixtieth General Assembly and a new section was enacted in lieu thereof known as Section 11777, found on pages 683, 684, 685, Laws of 1939. The fees which the constable and deputy constable shall collect are set out in this section on pages 683, 684. This is followed by a provision relative to constables and deputies in counties not having less than 200,000 or more than 400,000 inhabitants which is applicable to constables and deputies in St. Louis County, and reads in part as follows:

"\* \* \* Provided further, that in any county which now has or may hereafter have not less than 200,000 and not more than 400,000 inhabitants, the Constables in such counties shall collect the fees authorized by law for their services, and shall at the end of each month file with the county clerk a report of all fees which they collected during said month, stating on what account or in what case such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of said constable. It shall be the duty of the constable upon the filing of the said report to forthwith pay over to the County Treasurer of such county all moneys collected by said constable or his deputies, and shall file with said moneys in the office of the Treasurer a duplicate of the report to the County Clerk, and shall receive from the County Treasurer a receipt in duplicate, a copy of which shall be filed in the office of the County Clerk, and every such Constable shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided. In lieu of all fees such constables shall receive a salary not to exceed \$2,700.00 per annum, payable pro rata at the end of each month out of the Treasury of said County and each Deputy Con-

stable as shall be approved by a majority of the judges of the circuit court shall be paid a salary not to exceed \$125.00 per month, the amount of compensation of the Constables and Deputy Constables shall be fixed by a majority of the judges of the circuit court within the limits herein before set forth. Provided However, No constable shall appoint any deputy constable as in this act provided except upon the approval of the majority of the judges of the Circuit Court who shall not approve the appointment of more than twenty-eight (28) deputy constables, and provided further that a majority of the judges of the Circuit Court shall approve at least two (2) deputies for each constable; and provided further that for extraordinary emergencies the Circuit Court may approve, subject to the provisions of this act the temporary appointments of such additional deputy constables as may be deemed necessary in the judgment of the majority of the court to meet said emergencies."

This act provides the constable may appoint his deputies with approval of the majority of the judges of the circuit court. This act further provides the constable shall collect all fees as prescribed by law for their services (Section 11777, supra). At the end of each month he shall make out a report showing all fees they collected and same shall be verified by the constable. It then becomes the duty of the constable to pay over all moneys collected by said constable and deputies to the county treasurer and shall file a duplicate of the report made to the county clerk with the county court and he shall receive from the county court a receipt in duplicate and copy to be filed with the county court. Then the pertinent part of Section 11777, supra, reads as follows:

" \* \* \* In lieu of all fees such Constables shall receive a salary not to exceed \$2,700.00 per annum, payable pro rata at the end of each month out of the Treasury of said County and each Deputy Constable as shall be approved by a majority of the judges of the circuit court shall be paid a salary not to exceed \$125.00 per month, the amount of compensation of the Constables and Deputy Constables shall be fixed by a majority of the judges of the circuit court within the limits herein before set forth. \* \* "

Now applying the rules hereinabove referred to, the constable and his deputies are only entitled to such compensation as they can point out the statute authorizing such payment. (Nodaway County v. Kidder)

This section provides a salary for constables not to exceed a maximum of \$2700.00 per annum, and a salary for deputy constables not to exceed a maximum of \$125.00 per month. The amount of such compensation each of these officers is entitled to receive shall be determined by the majority of the judges of the circuit court not to exceed the maximum allowed by law. From all indications, the legislature intended to place the constables and deputies on a salary basis in lieu of all fees. In giving this provision, 11777, supra, the ordinary and usual meaning there is no ambiguity and, if not, the courts have all held there is no room for construction. If such a construction is considered inadequate, the general assembly is now in session and could consider an amendment allowing such mileage fees as considered necessary.

Mr. Walter E. Miller

-14--

February 18, 1941

Therefore, it is the opinion of this department that neither constables nor their deputies in St. Louis County are entitled to mileage fees in addition to their salary as approved by the majority of the circuit court.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

ARR/rv