

PROSECUTING ATTORNEY:

Prosecuting attorneys may be reimbursed for necessary and indispensable expenditure for stenographic services.

NEPOTISM:

No objection to county judges being related.

January 23, 1947



Mr. John F. Edmundson  
Clerk of the County Court  
Stoddard County  
Bloomfield, Missouri

Dear Sir:

We have your letter of January 17, 1947, requesting an opinion from this department, which reads in part as follows:

"1. How much per annum is the County Court authorized to allow the County Prosecuting Attorney on his Clerk hire? All we can find on it is, the Prosecuting Attorney may appoint an Assistant Attorney, but he must pay this himself. Nothing is stated in the House or Senate Bills passed by the 63rd General Assembly relating to the Clerk Hire of the County Prosecuting Attorney. At least, we do not have the Bills.

"2. Is it lawful for Judges to serve on the County Court if they are related to each other?"

Your first question presents a problem which is directly dealt with in the case of Rinehart v. Howell County, 348 Mo. 421, 153 S. W. (2d) 381. In that case it was held that a prosecuting attorney was entitled to be reimbursed for expenditures for stenographic services when such services were necessary for the proper operation of his office. It was said at 1. c. 424 and 425 (Mo.):

"\* \* \* The instant case was submitted on the theory, as disclosed by the

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stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in *Ewing v. Vernon County*, 216 Mo. 681, 695, 116 S. W. 518, 522(b). That case quoted with approval a passage from 23 Am. and Eng. Ency. Law (2 Ed.) 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories and held a recorder entitled to reimbursement for outlays for necessary janitor service and stamps, stating: 'Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore, those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo.'

The fact that the General Assembly has provided salary for stenographic service to the prosecuting attorneys in larger counties, does not imply that it was the intention of the General Assembly to exclude such expenditure in all other counties. On the contrary, these provisions constitute legislative recognition of the necessity of such expenditure in the light of the many duties and functions of the prosecuting attorney's office. It is pointed out in the *Rinehart* case that these statutory provisions are, in effect, "an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public." Then the court went on to say, at l. c. 425, that:

"\* \* \* Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic

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services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's protection of the interests of the State, the county and the public. \* \* \*

A prosecuting attorney's right to be reimbursed for his reasonable and actual expenditure for stenographic services depends upon whether such services are necessary and indispensable to the operation of the office of prosecuting attorney. This is a question of fact to be determined in the first instance by the county court. And if that body acts arbitrarily in refusing to reimburse the prosecuting attorney for his expenditure in obtaining such services, then this question may be presented to a court of law in a suit for the recovery of such expenditure.

In answer to your second question, we believe that you have confused the situation referred to there with nepotism. "Nepotism" is defined in 45 C. J., at page 1383, as:

"Favortism shown to nephews and other relatives; bestowal of patronage by reason of relationship, rather than of merit."

The 1945 Missouri Constitution, in Section 6 of Article VII, defines "nepotism" and also imposes a penalty for such practice:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

It will be observed, then, that this prohibition relates only to the appointment or employment of relatives of a certain degree by consanguinity or affinity. There is no prohibition with respect to elective officials.

Therefore, since judges of the county court are elected by the people, the prohibition against nepotism is not applicable as between such judges. There is no objection to judges of the county court being related to each other.

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CONCLUSION

Therefore, it is the opinion of this department that a prosecuting attorney is entitled to be reimbursed for expenditure for stenographic services when such services are necessary and indispensable to the proper administration of the affairs of the office of prosecuting attorney. Further, the question of whether such expenditure is necessary and indispensable, is a question of fact to be determined by the county court.

And, it is also the opinion of this department that the prohibition against nepotism is not applicable as between county judges, as they are elective officials.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
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