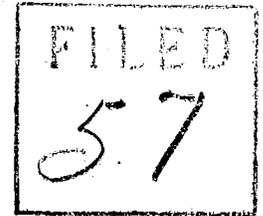


COUNTY OFFICERS: Mode of determining compensation for judges of the county courts in third class counties.



February 18, 1947

Honorable G. Logan Marr,  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

"Our county court has requested an opinion as to the meaning of the days meant in H.B. No. 779.

"1. Does that mean the first five consecutive days of the month, that the court meets, to transact business?

"2. Or does the statute mean, the first five days of the month, that the court meets, and might not be the first five consecutive days of the month?

"3. And if two of the members of the court held court and having constituted a quorum, and they met five days, the first five meeting days of the month, and for which they would be entitled to the \$10.00 per day for the first five days they met,

"How the third member, he attends court, with the other two, but, is he entitled to \$10.00 for the first five days of court he attends, after he has returned from his absence? In other words, does that \$10.00 apply to the court so meeting the first five days of the month they meet, and not the fact that each member in court gets \$10.00, for each five days the member of the court is in session?"

We note that you have referred to House Bill No. 779. For your information, House Bill No. 779 of the 63rd General Assembly fixes the compensation for judges of the county court in counties of the fourth class. According to the classification adopted by the 63rd General Assembly, pursuant to constitutional provisions, Morgan County has been placed in the third class, and therefore the Act mentioned by you is not applicable.

However, we have made further examination of the legislative enactments of the 63rd General Assembly and find that House Bill No. 778 deals with the compensation of judges of the county court in counties of the third class.

Section 1 of the Act mentioned reads, in part, as follows:

"In all counties of the third class in this state, the judges of the county court shall receive for their services the sum of ten dollars per day for each of the first five days in any month that they are necessarily engaged in holding court and shall receive five dollars per day for each additional day in any month that they may be necessarily engaged in holding court, \* \* \*"

Your first two inquiries bring up the question of whether or not the ten dollar per day allowance may be made to the respective judges of the county court only if the court meets the first five consecutive days in any month.

We do not believe that it is necessary that court be held on the first five consecutive days of the month to entitle the judges thereof to the ten dollar per day compensation. You will note that the Act reads, "\* \* \* shall receive \* \* \* ten dollars per day for each of the first five days in any month that they are necessarily engaged in holding court \* \* \*." It is our thought that the portion of the quoted sentence which has been underscored is a qualification of the portion preceding it; in other words, that the ten dollar per day compensation is allowable for the first five days spent in holding court, without regard to the portion of the month that such court is held.

The terms of the county court are fixed by statute, namely, Section 2485, R. S. No. 1939, as the first Monday in February, May, August and November. These are designated regular terms and may be varied by the county court if it seems expedient to do so, upon giving notice of such change. Further, under the

provisions of Section 2489, R. S. Mo. 1939, the county court may hold adjourned terms at such times as it becomes necessary for the transaction of county business.

It is noted that under these two statutes the county court is endowed with a broad discretion as to the exact time of holding court, the test in each instance being that such court be held for the proper discharge of its duties. With these provisions in mind, it seems to us that the provision for additional compensation for the first five days of court necessarily held, which is found in the above quoted portion of House Bill No. 778 of the 63rd General Assembly, was designed to compensate the respective judges for the first five days that it is deemed necessary in any month to meet to transact county business.

Your third inquiry brings up the question of whether or not a member of the county court who fails to attend one or more of the first five days of county court in any one month is entitled to be compensated at the rate of ten dollars per day for the first five days of court which he does thereafter attend in any one month.

Under the provisions of Section 2493, R. S. Mo. 1939, a majority of the judges of the county court constitutes a quorum. Therefore, under the provisions of this statute, the business of the court may be transacted by the two members meeting. In view of the conclusion that we have reached with respect to the first and second questions which you have proposed, we are led to the belief that the compensation of ten dollars per day is limited to those judges who attend the first five meetings of the court in any month. Should one of the judges fail to attend one or more of such first five days of court, he may be compensated at the rate of ten dollars per day for only such of the first five days he actually attends in any month; thereafter the compensation of all judges shall be at the rate of five dollars per day, as provided in the Act.

#### CONCLUSION

In the premises, we are of the opinion (1) that the judges of the county court in counties of the third class are each entitled to ten dollars per day for attendance at the first five sessions of court held in any one month, and (2) that such com-

Honorable G. Logan Marr - 4

pensation of ten dollars per day may be paid only for attendance at such first five days in any one month.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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