

COURT REPORTERS:
SALARIES:
CIRCUIT COURT REPORTERS:
APPROPRIATIONS:
OFFICIAL COURT REPORTERS:

S.C.S.H.B. #384 of the 68th General Assembly requires the state to pay one-fourth of the salary of a court reporter, and in the absence of both an appropriation by the Legislature for this purpose and a statutory requirement that the state reimburse

counties which pay the total salary, a court reporter will receive only three-fourths of his salary.



September 8, 1955

Honorable Cowgill Blair, Jr.
Prosecuting Attorney
Jasper County
Joplin, Missouri

Attention: Mr. R. A. Esterly

Dear Sir:

This is in response to your request for an official opinion of this office, which request reads as follows:

"Carl Sanders, County Clerk of Jasper County, after conferring with and at the suggestion of Newton Atterbury, State Comptroller, has raised a question with reference to Senate Committee Substitute for House Bill #384 which I understand is to become effective August 29th, and provides for a \$1,000 salary raise to court reporters in the Circuit Courts of this state, $\frac{3}{4}$ of which is to be paid by the County and $\frac{1}{4}$ by the State.

"Mr. Sanders states that no money was appropriated by the State for paying its portion of this salary. Mr. Sanders, therefore, raises the question as to whether or not it becomes incumbent upon the County to pay the State's portion of this salary raise, or is the effect of this just to give the court reporters a raise equivalent to $\frac{3}{4}$ of \$1,000 per year? In other words, just what are the duties of the County Clerk with reference to salary to be paid to court reporters under this new law?"

Since no money was appropriated by the Legislature for the salaries of court reporters, it is clear that the State Comptroller is not able to carry out S.C.S.H.B. #384. See Article IV,

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Section 28, Constitution of Missouri, 1945, which reads as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay. * * *"

Section 33.170, RSMo 1949, in accordance with the Constitution, provides:

"No claim or account shall be preapproved by the comptroller, nor shall any warrant be paid by the state treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

The issue becomes then whether the Legislature in passing S.C.S.H.B. #384, intended to have the counties pay the entire salary and for the state to reimburse them for one-fourth of such expense.

Section 485.060, of House Bill 384, as perfected, stated in part:

"1. Court reporter shall receive salary as follows:

"(1) In judicial circuits which now have and such as may hereafter have a population of sixty thousand or more, an annual salary of six thousand dollars, payable in equal monthly installments out of the state treasury on the certification of the judge of the court in whose division such court reporter is employed." (Emphasis supplied.)

and Section 485.065, stated, in part, as follows:

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"Court reporters are hereby declared to be state employees and shall hereafter be considered as such. All salaries, fees and other compensations due court reporters shall hereafter be paid out of the state treasury and all fees earned and collected by the clerk of any court for the services of court reporters shall be paid into the state treasury to the credit of the general revenue fund.* * *"

This proposed section was, of course, a substantial revision of Section 485.060, RSMo Cumulative Supplement, 1953, which nowhere made court reporters "state employees" and further provided that:

"(1) In judicial circuits which now have and such as may hereafter have a population of sixty thousand or more, an annual salary of five thousand dollars, payable in equal monthly installments out of the city or county treasury on the certification of the judge of the court in whose division such court reporter is employed; * * *" (Emphasis supplied.)

S.C.S.H.B. #384, (Truly Agreed to and Finally Passed), striking out this radical change of House Bill #384, provides:

"485.060. The court reporter for a circuit or common pleas court shall receive an annual salary of six thousand dollars, payable in equal monthly installments on the certification of the judge of the court or division in whose court the reporter is employed."

"485.065. Three fourths of the salary of the court reporter shall be paid out of the county treasury and one-fourth out of the state treasury. Where a judicial circuit is composed of more than one county, the county part of the salary shall be divided among the counties and be paid by them proportionately as the population of such county bears to the entire population of the circuit."

The Legislature, in the final version of House Bill 384, expressly repudiated the provision making court reporters state employees and required that only one-fourth of the salary allowed

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court reporters be paid by the state. Therefore, either the court reporters are to consider themselves as partly state employees in regard to salaries, or remain in their status of county employee. Although the Legislature did not clearly change the latter status to the former in S.C.S.H.B. #384, it did intend to move towards making court reporters dependent on the state for salary and expenses. As an indication of this legislative intent, Section 485.090 of S.C.S.H.B. #384 should be noted:

"Every official court reporter of a circuit court of a judicial circuit comprised of two or more counties, in addition to his salary, shall be reimbursed for all sums of money actually expended by him in necessary hotel and traveling expenses while engaged in attending any regular, special or adjourned term of court at any place in the judicial circuit in which he is appointed, other than the county of his residence, or while engaged in going to and from any such place for the purpose of attending terms of court. Three-fourths of the actual expenses of the official court reporter, as herein provided, shall be paid out of the county treasury and one-fourth out of the state treasury. Where a judicial circuit is composed of more than one county, the county part of the expense shall be divided among the counties in the manner provided in Section 485.065; provided however that the actual expenses of the official court reporter upon transfer from the judicial circuit to which assigned shall be paid out of the state treasury." (Emphasis supplied.)

This section should be compared with earlier Section 485.090, RSMo Cumulative Supplement 1953:

"Every official court reporter of a circuit or criminal court of a judicial circuit comprised of two or more counties shall be allowed and paid all sums of money actually expended only in necessary hotel and traveling expenses, while engaged in attending any regular, special or adjourned term of court at any place in the

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judicial circuit in which he is appointed, other than the county of his residence, or while engaged in going to and from any such place for the purpose of attending such terms of court. Such moneys shall be paid out of the county treasuries of the respective counties in said judicial circuit in proportion to their respective population." (Emphasis supplied.)

Furthermore, one need not even speculate as to legislative intent when the words of the statute are so plain and unambiguous as in Section 485.065:

"Three-fourths of the salary of the court reporter shall be paid out of the county treasury and one fourth out of the state treasury. * * *"

A somewhat analagous situation was discussed in the attached opinion written to the Honorable J. Marcus Kirtley, County Counselor of Jackson County on July 27, 1955, in which Section 111.405, RSMo Cumulative Supplement, 1953, was discussed. Section 111.405, requires that the state reimburse a county for its election expenses when only statewide issues appear on a ballot. This section provides expressly, however, for such a reimbursement. Nothing in S.C.S.H.B. #384 requires the state to reimburse a county which has paid all of a court reporter's salary.

In the absence then of both an express requirement for state reimbursement of counties which pay the entire salary and an appropriation by the legislature to pay the state's share of the salary, court reporters are necessarily denied one-fourth of the salary allowed under S.C.S.H.B. #384.

CONCLUSION

It is, therefore, the opinion of this office that S.C.S.H.B. #384 of the 68th General Assembly requires the state to pay one-fourth of the salary of a court reporter, and in the absence of both an appropriation by the Legislature for this purpose and a statutory requirement that the state reimburse counties which pay the total salary, a court reporter will receive only three-fourths of his salary.

Very truly yours,

John M. Dalton
Attorney General

Enclosure - J. Marcus Kirtley
7-27-55

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