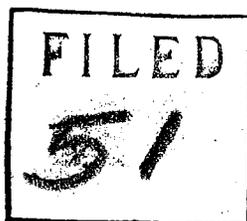


COUNTY COURTS:
COUNTY HIGHWAY EQUIPMENT:
COUNTY SURVEYOR:
COUNTY HIGHWAY ENGINEER:

A county court is authorized to purchase a vehicle as county highway equipment to be used by the county highway engineer exclusively in county business.



October 10, 1955

Honorable Alden S. Lance
Prosecuting Attorney
Andrew County
Savannah, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"I would like to have your office render an opinion concerning the questions of law which are set out herewith:

"Section 49.110 Mo. RS 1949 states that, '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 ten 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...'

"1. If one member of the Court were out of the County and the other two members were in regular session transacting business of the County, would the member who was out of the County be entitled to pay for that particular session under the statute quoted above? If one member of the Court were at his home in the County and talked with the other two members who were in session by telephone concerning some problem of County business before the Court at that time, would this member who was at home be entitled to per diem pay for that session of the court?

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"2. Would a County Court in Class 3 County have the authority to purchase a jeep or other form of transportation as part of their highway department equipment for the use of the County Surveyor and Highway Engineer, to be used exclusively in the transaction of business for the County?

"3. In a County of the third class which is attempting to operate on a 'cash basis', do the Constitution and Statutes of the State of Missouri require that the county have enough cash on hand in the treasury to pay all of the budgeted items at the time the budget is approved, or does it merely mean that the actual revenues received during the current year be sufficient to cover all the budgeted expenses for the current year? The purpose of this question is to clear up the matter of what is meant by 'cash basis' in reference to the financial operation of counties of the third class.

"4. This case concerns a problem connected with common school districts. Would the school board of a common school district have the legal authority to pay the parents of resident school pupils who are being transported to high school in an adjacent town district by the parents' private automobile at the same rates that the district is paying for bus transportation provided by the adjacent town district, when the school busses are regularly operating upon routes which extend by the residence of the pupils concerned? These pupils live near the end of the school bus route and they feel that it is more convenient to use their parents' transportation than it is to ride the school bus throughout the regular route.

"An early opinion on the problems set out above will be appreciated."

In answer to your first question I am enclosing two opinions previously rendered by this office, one of which was to the Honorable Herbert H. Douglas, dated December 15, 1939; one to the Honorable G. Logan Marr on February 18, 1947. Although the

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statutes have been changed since 1939 as to the compensation of judges of the county court the language we are interested in is the same. The opinion to Mr. Douglas held that the words "necessarily engaged in holding court" as used in determining whether the judges of the county court shall receive compensation for their services meant that the judge is not entitled to compensation unless he is actually present on the day in question; and the opinion to the Honorable G. Logan Marr held that the judges must be in attendance before they are entitled to compensation. Thus, under these two opinions the judges of the county court are not entitled to compensation unless they are present and attend the court on the day in question.

In answer to your third question I am enclosing an opinion rendered by this office on January 19, 1949, to the Honorable William Lee Dodd, Prosecuting Attorney of Ripley County, Doniphan, Missouri.

In answer to your fourth question I am enclosing an opinion rendered by this office on November 12, 1953, to the Honorable Joseph M. Bone, Prosecuting Attorney of Audrain County, Mexico, Missouri.

The second question is whether the county court in a class three county has the authority to purchase a jeep, or other form of transportation, as part of their highway department equipment for the use of the county highway engineer, to be used exclusively in the transaction of business for the county. Section 49.270, RSMo 1949, states:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Thus, this section authorizes the county court to purchase personal property for the use and benefit of the county.

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We find no statutes prohibiting the county court of a third class county from purchasing such a motor vehicle under statutes having to do with county highway equipment or the county highway engineer. Therefore, this office is of the opinion that if the county court of a third class county, in the exercise of its sound discretion, should decide that the purchase of such vehicle would be beneficial to the county, it would be authorized to purchase such vehicle for the use of the county highway engineer.

CONCLUSION

It is the opinion of this office that a county court of a third class county is authorized to purchase a motor vehicle as county highway equipment to be used by the county highway engineer exclusively for county business.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly,

John M. Dalton
Attorney General

Enclosures - Herbert H. Douglas
12-15-39

G. Logan Marr
2-18-47

William Lee Dodd
1-19-49

HLV:vlw