

COURT REPORTER:  
REPORTER:

The state's portion of the compensation due a temporary court reporter should not be computed on a basis of so much per day, but should be computed on the same basis as the compensation authorized the regular court reporter.



November 28, 1956

Honorable Haskell Holman  
State Auditor  
Jefferson City, Missouri

Dear Sir:

Under date of October 27, 1956, this office issued an official opinion holding that the state is obligated to pay one-fourth of the compensation allowed to a temporary court reporter. This opinion was directed to your office. You now inquire as to the proper method of computing the state's portion of the compensation allowed to a temporary court reporter.

The certification of services of a temporary court reporter for the circuit court of Jackson County, Division No. 2, submitted with your opinion request reads, in part, as follows:

"For reporting services as temporary reporter in Division No. 2 of the Circuit Court of Jackson County, Missouri, at Kansas City (as provided in Sections 485.060, 485.065 and 485.075 R.S.Mo. 1949).

"30 days at \$5.77.....\$173.10."

The certification further shows that the temporary court reporter served on the following dates during the months of March and April, 1956: March 5, 6, 7, 8, 9, 13, 15, 16, 19, 20, 21, 22, 23, 26, 27, 29 and 30; April 2, 3, 4, 5, 6, 10, 11, 12, 13, 16, 17, 19 and 24.

We assume for the purpose of this opinion only, and the question herein asked, that the appointment of the temporary court reporter, as indicated by the certification, was on a daily basis, and do not mean to infer or imply that the reasoning contained in this opinion would necessarily be applicable if the appointment was for a period or periods longer than a day.

Section 485.075 RSMo Cum. Supp. 1955, provides that a temporary court reporter shall receive the same compensation as provided for the regular reporter. Said section more fully provides as follows:

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"In the absence of the official reporter of any circuit court or any division of any circuit court, or of any court of common pleas, or of any court of criminal correction because of illness or physical incapacity to perform his duties, the judge of such court may appoint a temporary reporter, who shall perform the same duties and receive the same compensation as provided for the regular reporter for the time served by the appointee as temporary reporter, to be paid upon certification of the judge making such appointment. No temporary appointment shall continue through more than thirty court days in any calendar year."

Section 485.060, RSMo Cum. Supp. 1955, provides for the compensation of the regular court reporter as follows:

"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."

It is apparent to us that the daily rate (due from the state) indicated on the certification was computed by dividing the number of days in the year, exclusive of Saturdays and Sundays, into the annual salary of \$6,000 allowed the regular court reporter. It is our opinion that such is not the correct method of computing the compensation due a temporary court reporter. The difficulty with such computation is that the regular court reporter is not paid at a daily rate or upon a five-day week, but is allowed an annual salary payable in equal monthly installments of \$500. Nothing is stated in the statutes relating to his compensation that said salary is dependent upon the days of service. Under such circumstances the general rule prevails, that the right to compensation is incident to the legal right to the office and not to the exercise of the functions of the office. *Coleman v. Kansas City*, 173 S.W.(2d) 572, 351 Mo. 254; *Stratton v. City of Warrensburg*, 167 S.W.(2d) 392, 237 Mo. App. 280. Since a temporary court reporter is entitled to the same compensation as the regular reporter how can it be said that the temporary reporter's compensation should be computed on a daily basis when the regular reporter is not so compensated? It is a familiar rule of statutory construction that statutes providing compensation in a particular mode or manner must be strictly construed against the officer. *Nodaway v. Kidder*, 129 S.W.(2d) 857, 344 Mo. 795. With such rule in mind we are of the opinion that the correct method of computing the compensation of a temporary court reporter would be to multiply \$500 (the amount payable monthly to the regular court reporter) by the fraction of the month covered by the temporary appointment.

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More specifically in the instant case the certification shows the appointment of a temporary court reporter for seventeen days during the month of March, 1956. Therefore \$500 times 17/31 would, we believe, result in the correct compensation of the temporary reporter. This method, of course, places the temporary reporter on the same basis as the regular reporter which, we believe, is contemplated by the statutes.

CONCLUSION

Therefore, in the premises, the state's portion of the compensation due a temporary court reporter should not be computed on a basis of so much per day, but should be computed on the same basis as compensation authorized the regular court reporter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Very truly yours,

John M. Dalton  
Attorney General

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