

COUNTY CHARTER COMMISSION:
COUNTY OFFICERS:
NECESSARY GOVERNMENTAL
EXPENSES:
COUNTY LIABILITY OR
REIMBURSEMENT FOR EXPENSES:
CONSTITUTIONAL LAW:

The Clay County Court is authorized to expend county funds to meet the necessary expenses incurred by the Clay County Charter Commission in the performance of its official duties. Necessary expenses do not include fees for professional advice and services meals consumed, clothing depleted or commutation expenses incurred by commission members. Nor

may the county use its funds in any way to compensate members of the commission for their services.

OPINION NO. 198

July 10, 1969



Honorable P. Wayne Kuhlman
Assistant Prosecuting Attorney
Clay County Court House
Liberty, Missouri 64068

Dear Mr. Kuhlman:

This opinion is in response to your letter of recent date in which you request an official opinion from this office on the following question:

"The Clay County Charter Commission was appointed by the Clay County Court October 25, 1968, to draft a charter for submitting to the voters of Clay County. Is the Clay County Court authorized to expend county funds to support the Charter Commission?"

Subsequent to your request, your office furnished this office with the following budget of the Clay County Charter Commission:

Clerical Salaries	\$1,000.00
Printing	500.00
Professional Services	5,000.00
Office Supplies	250.00
Postage	150.00
Contingent Fund	200.00
TOTAL	\$7,100.00

Article VI, Section 18 of the Constitution of Missouri permits the establishment of charter government for counties having population in excess of eighty-five thousand inhabitants. Article VI, Sections 18(f) and (g) provide for the drafting of proposed county charters by commissions appointed by the judges of the circuit and probate courts pursuant to petition.

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Article VI, Section 18(g) specifically provides:

"Within sixty days thereafter said judges shall appoint a commission to frame the charter, consisting of fourteen freeholders who shall serve without pay and be equally divided between the two political parties casting the greater number of votes for governor at the last preceding general election."

Thus, two relevant points are quite clear: (1) Charter commissions are charged by the Constitution with performing an important governmental function for the counties, i.e., establishing a vehicle for peaceful change of the structure of county government, and (2) the members of such commissions are to serve without compensation for their services. Nothing is stated in the Constitution regarding the necessary expenses of such commissions.

However, Section 49.510, RSMo provides:

"It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct."

If then members of the Clay County Charter Commission may be said to be county officers, the commission is entitled to support for its work from county funds at least to the extent specifically required by Section 49.510, RSMo. Since the commission is provided for by the Constitution and charged with a vital county governmental function and since the members of the commission were appointed by the judges of the Circuit and Probate Courts, it is the opinion of this office that the members of the commission are "officers of the county" within the meaning of Section 49.510 RSMo.

The question remains whether expenses necessary to the operation of the commission incurred by members beyond those specifically provided for by Section 49.510 RSMo, for instance travel expenses of members (other than expenses for commutation to and from a member's place of residence) and long distance telephone charges, may be met from County funds.

While it may be argued that by designating certain necessary expenses of county officers to be met from county funds, other necessary expenses are excluded from similar consideration unless provided for else where, this office takes the view that Section 49.510, RSMo is merely intended to provide minimum support for county officers

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and does not preclude the expenditure of county funds to meet other expenses necessarily incurred by county officers in the performance of their duties. See Rinehart v. Howell County, 348 Mo. 421, 425, 153 SW 2d 381, 383 (1941).

A liberal construction of Section 49.510 RSMo comports with the wise public policy of encouraging competent adult citizens of Missouri to participate actively in local governmental affairs.

Our conclusions, that Section 49.510 RSMo, does not preclude county funds from being used for the purpose of paying necessary expenses incurred by County Charter Commissions in the conduct of their business beyond those expenses specifically provided for in the said statute and that the county has the authority to appropriate public funds for such purposes, are supported by the cases of Ewing v. Vernon County, 216 Mo. 681, 116 SW 518 (1909) and Rinehart v. Howell County, 348 Mo. 421, 153 SW 2d 381 (1941).

In Ewing the plaintiff, a former Recorder of Deeds, sued Vernon County for the amount expended by him to obtain janitorial services for his office and for the amount expended by him for postage stamps used to mail documents back to members of the public following recordation. No statute provided specifically for such expenses incurred by the Recorder. Nevertheless, the Supreme Court ruled that the plaintiff was entitled to reimbursement for meeting these expenses out of his own pocket. In so ruling, the Court said, Mo. l.c. 695:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. & Eng. Ency. of Law (2d Ed.) p. 338. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed to him. Provisions against increasing the compensation of officers do not apply to such cases. . . .'"

The same reasoning applies to County Charter Commissions, which are performing a necessary governmental function.

In the case of Rinehart v. Howell County, supra, the plaintiff, prosecuting attorney for Howell County, sued the county for reimbursement of reasonable sums paid for necessary stenographic services incurred in the discharge of his official duties. While certain sections of the Missouri Revised Statutes of 1939 authorized and established salaries for stenographic services to prosecuting attorneys in the larger counties of the state, they made no provision for like services in lesser populated counties such as Howell. The county refused to reimburse the prosecuting attorney, contending, inter alia, that payment for such services

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in the smaller counties was precluded by these sections.

In affirming the trial court's judgment for the prosecuting attorney, the Supreme Court rejected the argument that the statutes relied on by the county precluded payment for needed stenographic services.

The court said, SW l.c. 383:

". . . Such enactments, . . . 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 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. . . ."

This same reasoning refutes the contention that Section 49.510, RSMo 1959, limits the counties as to the support they may provide to county officers. This statute merely relieves the counties of the burden of deciding in each case the propriety of expenditures for services listed in Section 49.510.

In addition to deciding that the statutes cited by the county did not preclude reimbursement, the Supreme Court held that the necessary expenses incurred by county officials in the course of performing their official duties were the responsibility of the county, following closely the reasoning of the Ewing case, supra. See Missouri Attorney General Opinion No. 4 of April 1, 1969, rendered to Weber, a copy of which is enclosed.

While this office is of the opinion that the expenses necessary to support the operation of the Clay County Charter Commission may be met from county funds, it must be indicated that not all expenses incurred by the members of the commission in the course of discharging their responsibilities may be considered "necessary" expenses so as to be the responsibility of the county. Included in the charter commissions budget is an item for "professional services" of \$5,000. This sum is to be paid by the charter commission for legal and other professional advice and services. It is the view of this office that such payment is not a necessary expenditure.

It must be presumed that the circuit and probate judges selected as commissioners persons competent and able to frame a charter without hiring private experts to help them. This being so, they are without authority to hire others to discharge or aid in discharging their responsibilities.

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If legal advice is needed by the commissioners, they may obtain it only from the county prosecuting attorney. Section 56.070, RSMo 1959 provides in pertinent part:

"The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. He shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court or any judge thereof, except in counties in which there is a county counselor."

Since we have already determined the commissioners to be county officers, it is to the Prosecuting Attorney of Clay County that they must turn for their legal advice. See Missouri Attorney General Opinion No. 131, June 26, 1964, in which this office held that a county planning commission may not employ private legal counsel but must rely upon the advice of the prosecuting attorney in counties of the second class. And, as the statute plainly states, the advice sought from the prosecuting attorney must be given by him without fee. We enclose a copy of such opinion.

While not included in the Charter Commission's budget, it should also be noted that reimbursement for meals consumed and clothing depleted by the Charter Commissioners during their service is not a necessary expenditure. St. Louis County Court v. Ruland, 5 Mo. 268 (1838); Ewing v. Vernon County, supra. Nor is the county responsible for a member's travel expenses in traveling to any place in the county at which the day to day work of the commission is conducted or meetings of the commission are held. See Missouri Attorney General Opinion No. 4, April 1, 1969. Finally, it hardly needs to be said that members of the commission may not be compensated for their service to the county in the guise of paying "expenses" cast in the form of wages or income lost as a result of service on the commission. Missouri Constitution, Article VI, Section 18(g).

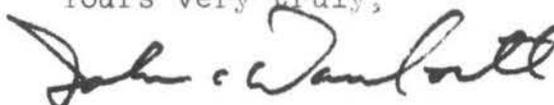
CONCLUSION

It is, therefore, the opinion of this office that the Clay County Court is authorized to expend county funds to meet the necessary expenses incurred by the Clay County Charter Commission in the performance of its official duties. Necessary expenses do not include fees for professional advice and services, meals consumed,

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clothing depleted or commutation expenses incurred by the commission members. Nor may the county use its funds in any way to compensate members of the commission for their services.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Encl: No. 4, 4-1-69, Weber
No.13, 6-26-64, Hollingsworth