

IN RE: Expenses of prosecuting attorney in change of venue cases.

11304-16 R.S. 9012 1924

May 31st, 1933



Hon. Howard R. Maness,  
Prosecuting Attorney,  
Ripley County,  
Doniphan, Missouri.

Dear Sir:

We have your request of May 15th, 1933 for an opinion on the following matters:

- "1. I would appreciate your opinion upon the following questions. What should be amount of the prosecuting attorney's salary in a county of 11,176 population as ascertained by the 1930 census.
2. Is the prosecuting attorney entitled to reimbursement for his actual expenses incurred in attending change of venue cases outside of his township and before a justice of the peace of his county.
3. Is a prosecuting attorney entitled to reimbursement for his actual expenses incurred in attending any criminal case before a justice of the peace in his county and outside of the township where the county seat is located.
4. I understand that a bill was passed in the last general assembly permitting the holders of County warrants to pool their warrants with the County Clerk in an effort to obtain a loan from the federal Government. If this is true, could you inform me as to the proper procedure."

In answer to the first proposition, we refer you specifically to Section 11314 R. S. Mo. 1929, which provides:

"On and after the 1st day of January 1921, the prosecuting attorney shall receive for his services per annum, to be paid out of the county treasury in all counties having a population \* \* \* of 10,000 and less than 15,000 inhabitants, the sum of Eleven Hundred Dollars."

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It therefore appears that your county having a population of 11,176 would entitle the prosecuting attorney to be paid under the above provision, namely Eleven Hundred Dollars per annum. In this connection, I am mailing you herewith a copy of the opinion dealing with this general subject under date of January 26th, 1933 which was prepared by Mr. Abington.

As to your second proposition, namely reimbursement for actual expenses incurred in attending cases on a change of venue, I call your attention to the following.

The jurisdiction of justice courts in misdemeanor cases is in the township where it is claimed the offense was committed. Section 3414 R. S. 1929 provides:

"All prosecutions before justices of the peace for misdemeanor shall be commenced and prosecuted in the township wherein the offense is alleged to have been committed."

This statute has heretofore been construed and followed by the court. State v. Alford, 142 Mo. App. 412; State v. Taylor, 167 Mo. App. 104.

A change of venue is authorized in cases before justice courts, and such cases may, on change of venue, be sent to another township in the county. Sections 3489 and 3490 R. S. 1929.

A justice of the peace may be compelled by mandamus to grant a change of venue. State ex rel. v. Watkins, 212 Mo. App. 501. Therefore such misdemeanor cases come within the various meanings of section 11316 R. S. 1929, which provides:

"In all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses."

The above section has reference to the duties of the prosecuting attorney in such cases. The term "fees" as used in such statute includes the salary. State ex rel. O'Conner v. Heidle et al, 48 S. W. (2d) 131. Therefore by the very terms of this statute, the prosecuting attorney in all change of venue cases shall be allowed his actual expenses, in addition to the salary or fees allowed by law. However, we construe the statute to mean that only in those cases where a change of venue is taken from the township, is the prosecuting attorney entitled to his expenses because the statute uses the words "to follow", and so long as the case remains in the original court, even though another justice of the peace may be called in, the prosecuting attorney has nothing to follow. We hold

that the prosecuting attorney is entitled to such expenses as may be incurred by him in following misdemeanor cases on change of venue from one township to another.

The above provisions with reference to change of venue in misdemeanor cases are made applicable to preliminary hearings by virtue of section 3432 A. S. 1929. But before deciding whether the prosecuting attorney is entitled to his expenses in following these change of venue orders in preliminary examination, we must ascertain what is the true meaning of the term "in all cases" that is used in section 11316. While this specific term has not been construed by the court, yet a similar term "cases", as contained in section 11318 A. S. 1929, it has heretofore been held that such term did not embrace preliminary examination. *Hill v. County*, 195 Mo. 511. However, the phraseology of section 11318 with reference to the term "cases" is modified by the second section thereafter, namely section 11320 which provides:

"No justice of the peace or judge of a court of record having jurisdiction shall allow any such cases as are alluded to in the two preceding sections to be tried before him, unless the prosecuting attorney shall be present."

The court in construing the term "cases", in the *Hill* case, supra, said that this latter section conclusively showed that the court had in mind only cases wherein the facts were to be tried and a final judgment entered. We find no such qualifying statute with reference to the term "cases" as used in section 11316 A. S. 1929. This section provides:

"In all cases, civil and criminal, in which changes of venue may be granted,\* \* \* he shall receive his actual expenses."

We have heretofore pointed out that changes of venue may be granted in either misdemeanor cases, or in preliminary hearings before justices of the peace. It is therefore the opinion of this office that the prosecuting attorney, in either preliminary hearings, or in misdemeanor cases, when a change of venue is taken from the justice having original jurisdiction to some other township in the county that the prosecuting attorney is entitled to his actual expenses incurred in following this change of venue.

As to your third inquiry, namely whether the prosecuting attorney is entitled to reimbursement for actual expenses incurred in attending the trial of criminal cases in justice courts in various parts of the county, we are obliged to answer this inquiry in the negative. We find no statutory authority, and no rule of a court

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decision to the contrary.

It cannot be urged that the expenses incurred in conducting and attending such trials in various parts of the county is the duty and expense placed upon the prosecuting attorney for which no reimbursement provision is made by law, because the prosecuting attorney has the right and authority to file such cases directly in the circuit court at the county seat; Section 3501 A. S. 1929. For your information, I am enclosing herewith an opinion with reference to the duty of the county to furnish and provide an office and the expenses incidental thereto.

As to your fourth inquiry, we are unable to answer that at this time, due to the fact that we do not have a copy of all the acts as passed by the Legislature and signed by the Governor and such laws will not be effective until July 24th, 1933. If this question requires an answer after that time, please advise.

Yours very truly,

FRANKLIN E. REAGAN,  
Assistant Attorney-General

FER/mh

APPROVED:

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ROY McKITTRICK  
Attorney-General