

JURORS, PAYMENT OF:

Effect of County Budget Law of 1933 (Laws of 1933, page 340) upon statutes regulating pay of jurors (R. S. Mo. 1929, Sections 8765, 8767.

February 9, 1934. 2-17-34



Honorable Alvin H. Juergensmeyer,
Prosecuting Attorney Warren County,
Warrenton, Missouri.

Dear Sir:

A letter has been received from you under date of December 26, 1933 containing a request for an opinion, such letter being in the following terms:

"Sections 8765, 8766 and 8767 R. S. Mo. 1929 provide that the Clerk of the Circuit Court shall issue scrip for the payment of jurors and that the treasurer shall pay same when presented.

Our Circuit Court will be in session on January 8, 1934 and no doubt will adjourn by the 15th of January, 1934.

Under section 8 of the Laws 1933 page 345 the treasurer cannot pay any warrant until the budget has been approved by the County Court and the State Auditor, this will not be done until after the February Term of the County Court, which will mean that the County Treasurer cannot pay any warrant until probably in March.

Under the law can the Circuit Clerk issue the scrip and if so can the treasurer legally pay same."

I.

LAWS CONCERNING PAYMENT OF JURORS

Revised Statutes of Missouri 1929 Section 8765 which follows the statute relating to compensation of jurors, provides as follows:

"Sec. 8765. Scrip to issue on demand of juror.--Upon the demand of such juror, the clerk shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the county treasury."

and Revised Statutes of Missouri 1929, Section 8767, provides as follows:

"Sec. 8767. Jury scrip, how paid--for what debts receivable.--The treasurer of the county is hereby required, upon the presentation to him of any scrips given by the clerk aforesaid, to pay the same out of any money in the treasury appropriated for county expenses, in the same manner and subject to the same rules as county warrants; and said scrip shall be received

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by the sheriff, collector or other proper officer in the payment of any debt due the county."

The characteristics of the "scrip" referred to in the above statutes show it to be similar to a warrant. Section 8765 says that such scrip shall show on its face the amount which it entitles its holder to receive out of the County Treasury, and Section 8767 requires the treasurer of the county to pay out such amount upon presentation and requires other county officials to accept it in payment for any debt due to the county. The last feature referred to shows that at the time it is presented it must be an obligation of the county to pay, in the nature of an acknowledgment of indebtedness so that it would not seem to differ materially from a warrant. It might be observed that the provisions of these two sections of the statute allow no option to the officials of the county in that Section 8765 provides that the Clerk "shall" give the juror a scrip upon demand and Section 8767 provides that the treasurer "is hereby required, upon the presentation to him of any scrips" to make payment thereof.

II.

EFFECT OF THE COUNTY BUDGET LAW OF 1933 ON THE LAW GOVERNING
PAYMENT OF JURORS.

(A) The County Budget Law enacted as Laws of 1933, page 340, deals in its first eight sections with counties having a population of 50,000 inhabitants or less (Section 1) and it provides a general scheme whereby each county included must draw a written estimate of expenditures and receipts for the calendar year which must be approved by the County Court at its regular February term, entered on the record of such Court and a certified copy thereof filed with the County Treasurer and the State Auditor (Section 8). The County Budget Law includes the pay of jurors (Section 5).

(B) As to the payment of any scrip which might be issued to jurors, Section 8 of the County Budget Law provides in part as follows:

"The county treasurer shall not pay nor enter protest on any warrant for the current year until such budget estimate shall have been so filed. (This shall not apply to warrants lawfully issued for accounts due for prior year, lawfully payable out of funds for prior years on hand). If any county treasurer shall pay or enter for protest any warrant before the budget estimate shall have been filed, as by this act provided, he shall be liable on his official bond for such act. Immediately upon receipt of the estimated budget the state auditor shall send to the county clerk his receipt therefor by registered mail."

It is apparent that the part of the County Budget Law just quoted is inconsistent and in conflict with R. S. Mo. 1929, Section 8767 insofar as the latter statute requires payment of scrip issued to jurors by the County Treasurer upon demand, if such scrip is presented before the filing of the budget estimate, and since the County Budget Law is the more recent of the two statutes

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it must repeal section 8767 insofar as the latter section requires payment of scrip issued to jurors where such scrip is presented for payment prior to the filing of the budget estimate. It might be observed at this point that the use of the word "warrant" in Section 8 of the County Budget Law would seem to cover scrip issued to jurors for the reason that practically and in legal effect the two are substantially identical as was set out in I, supra, for the reason that the pay of jurors is to be included in the budget estimate, and for the further reason that section 8767 provides that scrip of jurors is to be paid "in the same manner and subject to the same rules as county warrants."

(8) As to the issuance of scrip for the payment of jurors Section 8 of the County Budget Law provides in part as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

No positive prohibition has been found in the statute against merely issuing a warrant before the filing of the budget estimate. However, since jury pay (which by statute must mean scrip issued to jurors) is within the County Budget Law and must be included in the estimate to be filed (Section 5) and since that part of Section 8 just quoted clearly indicates that there could be issuances of warrants which would involve the persons participating in such issuances in liability on their bonds, and since the only possible kinds of issuances which might be referred to in such liability provision would be issuances for items not included in the budget estimate, either because such estimate did not include them when filed and approved, or because the budget estimate itself had not yet been filed and approved, in view of the personal liability upon the officials participating in such issuance we should not be willing to advise the Circuit Clerk to issue any scrip for the payment of jurors before the filing and approval of a budget estimate providing for such payments and, therefore, the part of Section 8 of the County Budget Law just quoted repeals section 8765 as to demands of a juror upon the Circuit Clerk for the issuance of scrip when such demands are made before the filing and approval of the budget estimate for that year.

It is our opinion that the Circuit Clerk of a county containing not over 50,000 inhabitants is under no duty to issue scrip for the payment of jurors prior to the filing and approval of the County Budget Law of that county for the current year, that such Circuit Clerk might be liable on his bond for such issuance, and that the Treasurer of such county would be liable on his bond for paying out of the County Treasury any such scrip before the filing and approval of the budget estimate of his county for such current year, and that any statute providing to the contrary, and especially R. S. No. 1929, Sections 8765 and 8767 are repealed to the extent that they are in conflict, which means that sections 8765 and 8767 are repealed insofar as they impose duties of issuance and payment of scrip to jurors prior to the filing and approval

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of such budget estimate although such statute would remain effective from such filing and approval until the end of such calendar year.

Yours very truly,

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.