

COU.

Salary of official court reporter should be in Class 4.

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March 1, 1934.



Mr. J.E. Leggett, Jr.,  
Official Court Reporter,  
22nd Judicial Circuit,  
Bloomfield, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of January 23 relative to the class in which you, as an official court reporter, should be classified under the new Budget Law. Your letter reads as follows:

"There is a controversy in this county concerning the classification, under the new budget law, of the salary of my office, which is that of Official Court Reporter of this judicial circuit, composing the counties of Stoddard and Dunklin.

It is my contention that my salary and expenses should be in Class 2 which includes 'Expenses of holding Circuit Court' and this view is also shared by Mr. Phillips, our Prosecuting Attorney, the members of the County Court, and Mr. Briney, whom I have employed to bring a mandamus suit in case I am put in class 4, which includes salaries of county officers.

I am in no sense a county officer but am a circuit officer the same as the Circuit Judge, and I am appointed by the Circuit Judge and all of my duties are connected with the Circuit Court and nothing else, and I can't see how my salary could be classed as anything but 'Expenses of holding Circuit Court'.

Mr. Phillips has or will write you asking for an opinion on this question, and Mr. Jackson, the County Clerk, has written you, and I wish you would send

me a copy of your opinion when you have prepared it."

The question arises as to whether or not your salary should be paid in Class 2 of the County Budget Law, Laws of Missouri, 1933, page 341, which is as follows:

"Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1, "

or Class 4 of said law, which is as follows:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

As above set out, in class 4 the phrase "to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county" is used, which presents the question of whether or not you are a county officer. In the case of *State ex rel. Rucker v. Hoffman*, 294 S.W. 429, the Court, in passing upon this question, said (l.c. 430-431):

"If such reporter is a county officer section 11016 provides as a basis of ascertaining his salary that the highest number of votes cast at the last previous general election be multiplied by 5, which would give Pettis county a population of 75,000. No provision is made in section 12670 for ascertaining population. Section 7057, R.S. of Mo. 1919,

does not apply because of section 11016."

Otto, J., speaking for the Supreme Court recently in the case of *Hastings v. Jasper County*, 282 S.W. 700, held that a probation officer appointed by the circuit court sitting as a juvenile court in Jasper County was a county officer. Such county comprises a judicial circuit as does Pettis county, and under the authority of this case we must hold that the official reporter of the Thirtieth judicial circuit comprising Pettis County alone is a county officer and his salary is governed by section 11016."

In this case you will note the court uses the language "circuit comprising Pettis County alone is a county officer". In your case the circuit is made up of two counties, and although we are impressed with the logic contained in your letter, and the fact that the court did not clarify the situation when more than one county is in a circuit, yet if they did not intend the rule to be the same, the result would be as was stated by Judge Bland in a dissenting opinion in the Hoffman Case, supra, (l.c. 432):

"An official court reporter in this state is in no sense an officer 'by whom the county performs its usual political functions, its function of government.' He has absolutely nothing to do with the government of a county, he is not appointed for a county, is not required to reside in any particular county, does not perform his functions in any certain county, and his duties are not limited by law to any particular county. It seems to me that he does not meet the test of a county officer in any respect. He is not a county officer, but has been often held an officer of the court which he serves. *State ex rel. v. Hitchcock*, 171 Mo. App. 109, 153 S.W. 546. When we remember that most of the circuits of this state are composed of more than one county, it will readily be seen that a court reporter in such a circuit cannot be a county officer, and it would be absurd to say that in some circuits the reporter is not a county officer while in others,

where the circuit is composed of one county, he is such an officer."

CONCLUSION

We are mindful of the fact that it would be possible to determine that your salary should be included in the "expenses of holding Circuit Court" and therefore come under Class 2, yet in view of the decision above quoted, which is the law of this State at the present time, we are of the opinion that your salary should be placed in Class 4 of the County Budget Law.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney General

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