

COUNTY BUDGET LAW: CLASSIFICATION OF SALARIES - OFFICE EXPENSE - TRAVELING EXPENSES.

Handwritten notes:
1-24
1-24

January 23, 1934.

FILED
58

Honorable Wade W. Maupin
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Sir:

We have your request of January 15, 1934, requesting this office for an opinion as to classification of the salaries, office expense, and traveling expenses of county officials. For convenience, we will divide this opinion into the following headings:

1. Salaries.
2. Office expense.
3. Traveling expense.

- * -

I.

SALARIES.

Section 2. of the County Budget Act - Laws of Missouri, 1933, pages 340-341 provides:

"Class 4: 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, * * * *"

We construe the meaning of Section 2, supra, to include both elective and appointive county officers. Briefly, this classification includes Prosecuting Attorney, Highway Engineer, County Court, Circuit Clerk, County Treasurer and Superintendent of Schools. The salaries of each of the above named county officers are paid out of the county revenue.

The Prosecuting Attorney is paid under Section 11314, R. S. Mo. 1929; the Highway Engineer - under Section 8008; the County Court judges - Laws of Missouri, 1933, page 204; Circuit Clerks - Laws of Missouri, 1933, page 369; County Treasurer, under Laws of 1933, page 339; and Superintendent of Schools is paid under Section 9463, R. S. Mo. 1929.

In the above county offices, such deputies as are appointed perform the same duties as the elected officials. The salaries of such deputies, as are payable out of the county revenue, are to be placed in Class Four of the Budget Act.

- * -

II.

OFFICE EXPENSE.

Class Four also includes office expense when the same is payable out of county revenue. Office expense generally means expenses incurred in performing duties in the office, such as stationery, stamps, ink, pens, pencils, rubber bands, paper clips, filing cabinet folders, loose leaf ledgers, and supplies of a temporary nature, the use of which calls for replacement. Fixtures, or supplies of a permanent nature such as tables, desks, chairs, typewriters, adding machines, dictaphones, etc., are not to be classified under the Budget law as "office expense" but are specifically placed in Class Six by the following provisions of Section 2. of the Budget Act:

* * * * Furniture, office machines

and equipment of whatever kind shall be listed under Class Six."

A janitor cannot be classified either as a county officer or an officer provided by law to perform the duties of a county officer. However, the expense of janitor service has heretofore been authorized as a necessary "office expense," - Ewing v. Vernon County, 316 Mo. 681, and therefore it is an expense necessarily incurred in the maintenance of an office.

Heretofore it has been held that the county was required to furnish an office - Boone v. Todd, 3 Mo. 140 (1832), and fuel for that office - St. Louis County v. Ruland, 5 Mo. 159 (1838). It therefore appears that the salaries or wages paid to janitors ought to be placed in Class Four. This is true under the above cases of the Supreme Court holding that necessary janitor service was an office expense, and also by the budget act itself. There are only two classes in the budget act wherein janitor service could be paid, and these classes are Four and Five. However, Class Five, under Section 2. of the Budget Act provides:

"* * * No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

It will therefore appear that the only provision in the Budget Act wherein janitors could be paid would be in Class Four. Class Four, under Section 2. of the Budget Act provides that "office expense" shall be placed therein.

Some officers are paid by fees, and insofar as the compensation is concerned, these officers do not come within the County Budget Act. However, most of these county officers who are paid fees receive office supplies from the county. They must therefore submit an estimate for such supplies to the county court. Section 3. of the Budget Act provides:

"Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary

revenue. No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished."

Such county officers include Recorder of Deeds, County Clerks, Probate Judge, Sheriff, Surveyor, and perhaps others.

- * -

III.

TRAVELING EXPENSES.

This item includes any general expense allowed by law to officers for the purpose of reimbursing such officers for expenses incurred by them in the discharge of their official duties. Specific statutory authority for the allowance of such expense, when incurred in the discharge of official duties, is not required to authorize the payment of such - Boone v. Todd, 3 Mo. 140 (1832); Harkreader v. Vernon Co., 216 Mo. 696 (1909); Buchanan v. Ralls, 283 Mo. 10; 232 S. W. 1002 (1920).

It was said in Harkreader v. Vernon County, 216 Mo. 696, (1909), l.c. 698:

"All legal debts made by any officer of the county in the discharge of his duties as such officer are county debts."

Therefore, any payment out of the county treasury to an officer for the purpose of reimbursing that officer for traveling

expenses necessarily incurred, allowed by law, in the discharge of his official duties, is to be classified as "contingent and emergency expense" and paid from Class Five of the Budget Act. Class Five provides:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue."

Necessary expenses outside of the office, such as traveling expense are always contingent. Into this category falls the expenses allowed the Prosecuting Attorney, Superintendent of Schools and the mileage allowed county court judges and expenses of the County Highway Engineer. The mileage allowed the county court judges is an expense item, and is not compensation for services since that compensation is fixed at a specific sum per day or per year depending upon the size of the county - Laws of 1933, page 204. The mileage is allowed once for each term of court and is for the purpose of reimbursing the County Judge for expense incurred going to attend that court, but at all times it is contingent upon the judge's actual attendance at court and the number of miles traveled by him. To construe this item of mileage as compensation or fees for services, and not as an item of expense would be to place a construction upon it so as to violate Section 12, Article IX. of the Constitution of Missouri which provides:

"The General Assembly shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population."

When three county judges travel different distances to attend court, the amount of mileage they receive is likewise different, and if this mileage allowance were construed as compensation, then it would not be uniform within the meaning of the above constitutional provision.

CONCLUSION.

It is therefore the opinion of this office that the salaries of all county officers including the deputies and janitor, together with the necessary inside office expense must be placed in Class Four, while the necessary outside office expense, herein classified as traveling expense, is to be placed in Class Five.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

FER/J