

OFFICERS:

Illegal for State, County of municipal officer to accept or use pass issued by railroad company in consideration of such officer acting as local attorney.

January 18, 1936 1-23

Honorable Henry B. Hunt
Prosecuting Attorney
Atchison County
Rock Port, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion , which reads as follows:

"Since my appointment as Prosecuting Attorney of Atchison county to fill the vacancy caused by the death of the Honorable Lee Mullins on November 21, 1935, two matters have arisen concerning which I request your opinion, to-wit:

"First: Is the prosecuting attorney permitted to submit to the county court his bill for reasonable and necessary expenses incurred in investigations and work incident to his office?

"Is the county court permitted to pay such a bill when rendered?

"Second: Since the year 1922, I have been the local attorney for the Chicago, Burlington & Quincy Railroad Company, and as such attorney, as a retainer fee, I have carried the Burlington Annual Railroad Pass.

"Can I legally hold, carry and use such pass? while occupying the county office of prosecuting attorney?"

"As indicated, said pass is a retainer, and is not a FREE pass."

In reply to your first question we inclose a copy of an opinion given to Honorable George F. Addison, Prosecuting Attorney, Salem, Missouri, under date of October 29, 1933, same having been written by Franklin E. Reagan, Assistant Attorney General, and approved by Roy McKittrick, Attorney General.

In answer to your second question we first call attention to the applicable provisions of the Constitution and statutes. Section 24, Article XII, of the Constitution of the State of Missouri reads as follows:

"No railroad or other transportation company shall grant free passes or tickets, or passes or tickets at a discount, to members of the General Assembly, or members of the Board of Equalization, or any State, or county, or municipal officers; and the acceptance of such pass or ticket, by a member of the General Assembly, or any such officer, shall be a forfeiture of his office."

Section 4360 Revised Statutes Missouri 1929 prohibits a railroad or other transportation company, from granting or issuing free passes or tickets, to state, county or municipal officers.

Section 4361 Revised Statutes Missouri 1929 makes it a misdemeanor for any officer or employee of a railroad or other transportation company to send or deliver any free passes or tickets to any state, county or municipal officer.

Section 4362 provides that any such officer who shall accept, use or travel on such free passes shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall forfeit his office. Said section reads:

"Any member of the general assembly of the state of Missouri, or member of the state board of equalization, or any state, judicial, county or municipal officer, who shall accept, use or travel on any free passes or tickets, or passes or tickets at a discount, mentioned in the preceding sections, shall be deemed guilty of a misdemeanor, and punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense, and upon conviction thereof, forfeit his office, and if there be no provisions made by law for the removal of such officer by impeachment, the court trying the cause shall adjudge the defendant to have forfeited his office and declare the same vacant: Provided, that no court other than the circuit court or criminal court of record shall have power to adjudge any such office to be forfeited and vacant."

Section 4363, which is entitled "Three preceding sections construed," provides:

"The meaning of the three preceding sections of this article shall not be so construed as to prevent any of the officers or persons named in said three preceding sections from buying, nor any of the persons named in said sections from selling, tickets to the officers or persons named in said sections at the same rate that they are sold to all other individuals or classes of individuals to which they may belong, using and traveling on the same."

Since the Legislature specifically provides that Sections 4360, 4361 and 4362 shall not be construed to pre-

vent public officers from buying, and railroads and other transportation companies and their employees from selling, tickets to such officers at the same rate they are sold to all other individuals, it is reasonable to suppose that they intended to prohibit the sale or issuance of tickets by railroads or other transportation companies to public officers, and the use of tickets by such officers, unless such tickets are sold to said officers at the same rate that they are sold to all other individuals.

In the case of Schulz v. Parker 175 N. W. 173, the facts were briefly as follows:

Chapter 112 of the Laws, 32nd General Assembly of Iowa, prohibiting any common carrier of passengers from issuing, furnishing or giving any free tickets or passes for the carriage or passage of any person within the State, and prohibiting any person from accepting or using any free ticket or pass, with certain exceptions. The words 'free ticket,' 'free pass,' and 'free transportation' are defined to include any ticket, pass, contract, permit or transportation issued, furnished or given to any person by any common carrier of passengers for any other consideration than money paid in the usual way at the rate, fare or charge open to all who desire to purchase. Plaintiff was issued a pass by the Illinois Central Railroad Company in pursuance to a contract whereby the plaintiff, as an attorney at law, agreed to act as local attorney for such company. Such contemplated services were occasional or casual rather than usual or general. The annual pass in question was to be received in full compensation for such prospective services. Plaintiff contended that his pass was not a 'free pass' and that the prohibition of the statute applied only to a free pass and not to a pass supported by any consideration.

The Supreme Court of Iowa, l. c. 176, in answer to plaintiff's contention, said:

"It is further agreed at this point that a 'free pass' is a free pass, and that it is incapable of any other definition. The authorities cited by the appellant are not quite agreed as to what constitutes a free pass. In State v. Martyn, 82 Neb.225, 117 N. W. 719, 23 L. R. A. (N.S.) 217, 17 Ann. Cas.659, it was held that, where the services of a surgeon were rendered for \$25 a month and an annual pass, the provision for the

pass was a mere evasion of the statute, and was a gratuity within the meaning of the statute. If one were to pay \$1 for an annual pass over the line of a great railway system, it would not be a free pass in a literal sense as contended for by plaintiff. But a court might well construe it as such as being within the spirit of the statute; otherwise the statute would fall by the mere weight of its own words. It could be evaded with impunity in numberless ways, whereby its letter could be obeyed and its spirit violated. If for the nominal consideration of \$1 we should substitute the substantial consideration of \$100, the problem would still remain. Such a substantial consideration would conform to the letter of the act with less appearance of evasion, but it would still leave the act ineffective for want of compliance with its manifest spirit. This is perhaps a sufficient illustration to show the reasonableness of applying legislative interpretation to the terms used in the act. By this interpretation it was announced that the word 'free' was not used in a literal and absolute sense, but that it was used in a sense sufficiently broad to give effectiveness to the legislation. If the spirit of the statute could be deemed broader than its literal terms, used in a strictly technical sense, then it was appropriate by definition to broaden the literal term to the larger dimension. And that is all that we have here. The purpose and effect of the definition is to make known by appropriate expression the scope of the statute both in letter and spirit, and to render coincident such letter and spirit. Otherwise the law is slain by its own letter, and furnishes an apt illustration of the Scripture saying: 'The letter killeth but the spirit giveth life.' 2 Cor.iii,6. An exhaustive citation and review of authorities may be found in a note to State v. Martyn, 82 Neb. 225, 117 N. W. 719, 23 L.R.A.(N.S) 217, 17 Ann. Cas. 659."

January 18, 1936

In the case of Coco v. Oden 143 La. 718, 8 A. L. R. 1. c. 681, the court defined 'free pass' as follows:

"A free pass or discrimination in rates is one for which a full consideration is not given, and the transportation is not paid for in the usual way, at the usual time, and at tariff rates.

" 'A'free pass" means the privilege of riding over' a railroad 'without payment of the customary fare.'
Perkins v. New York C. R. Co. 24 N. Y. 196, 203, 82 Am. Dec. 281; Words & Phrases, p. 2967."

The fact that a public officer accepted a pass before the law went into effect prohibiting such acceptance, would not give such officer the right to make use of such pass after a law was enacted prohibiting the acceptance or use of such pass, neither would the fact that a pass was accepted by a person before he was a public officer give such person the right to use such pass after he becomes a public officer.

In the case of People v. Rathbone 145 N. Y. 1. c. 440, the court said:

"The further point that the defendant cannot be subjected to the penal consequences of this constitutional provision is untenable; inasmuch as the public officer is prohibited from making use of a pass, as well as from receiving one. It is no answer to say that the appellant, having rightfully received a free pas for transportation over the railroad before the Constitution went into effect, cannot be prevented from using what is his property. It is doubtful whether it is to be regarded as property, in the true sense of the term. But that is of slight importance.

Honorable Henry S. Hunt

-7-

January 18, 1936

As a privilege extended to him by the corporation, the People may say to him that, while holding from them his public office, he shall not make use of this privilege. The provision was designed for the benefit of the public and had no other object than to do away utterly with the power of corporations to influence any public officer in the performance of the duties of his office."

CONCLUSION

In view of the above, it is the opinion of this department that it is illegal for a state, county or municipal officer to accept or use a free pass from any railroad or transportation company, even though said pass is issued in consideration of such officer acting as local attorney for such company.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

JET:LC

Inclosure