

COUNTY BUDGET ACT: Salary of Janitor should be in Class 4 - Estimate for Sup't. of County Farm should be placed in Class 5, when superintendent is not paid regular salary but receives compensation from the county court for boarding and maintaining each inmate.

January 29, 1936.



Honorable R.L. Jones,  
Clerk of County Court,  
New Madrid County,  
New Madrid, Missouri.

Dear Sir:

This department is in receipt of your letter of January 21 wherein you make inquiry as to the classification of certain appointive officials of the county under the County Budget Act. Your letter is as follows:

"We have received your opinion with regards to the appropriations for the Farm Bureau and Health Officer, in which you state that the Farm Bureau is optional with the County Court and that the salaries for any optional officer should be paid from Class six.

"We desire just a little further information; the janitor of the Court House is appointive by the County Court for a year at a time. Should his salary be paid from Class four or Class six?

"Also, with reference to our County Farm, we appoint a superintendent for a term of one year, and he feeds the inmates on a specified basis of \$14.50 per month, the county to furnish their clothes, smoking tobacco, etc., in addition to the rate for feeding. We own the farm and rent it to the Superintendent for cash rent, and all the necessary buildings on it for the inmates are furnished by the county. We have been paying all this expense from Class Five. Is this correct?

"We would like an answer to these questions immediately, and an opinion in detail is not absolutely necessary, because we are preparing our budget for this year."

## I

The Janitor

It appears that the janitor of a court house is not appointed under the provisions of any statute. However, in the various counties of the state a janitor of the court house is appointed, usually, as stated in your letter, for a period of one year. Regardless of the fact that there is no statutory authority for appointing a janitor, the courts of our state have held in a number of decisions that it is the duty of the county court to provide the offices with a janitor.

In the case of Ewing v. Vernon County, 216 Mo. 681, the court said (l.c. 692-694):

"Turning to other cognate sections it becomes plain that unless the Legislature deliberately planned to legislate against recorders and in favor of other county officers (an unthinkable position), it becomes plain that the county is to furnish the necessaries in furniture, fixtures, etc., to preserve the county records and make them usable by and useful to the general public. No one reading statutes relating to clerks, probate judges, etc., can come to any other conclusion. (See R.S. 1899, secs. 1647, 1648, 1654, 1662, 1750, 1763, 6710, 522 and 523.) By section 1750, supra, the circuit judges in cities having a population of 100,000 may appoint a janitor and the duties of such janitor are to keep the rooms of said court in an orderly and clean condition, etc. We assume that the object of this statute was not to make a statutory rule in favor of order and cleanliness in great cities as contradistinguished from small cities and counties, but was to graft on an exception and take away from the county courts of counties having such cities, the appointment of janitors for courtrooms--i.e., the statute by excepting counties having such cities and vesting the power in the circuit courts to appoint janitors there, recognizes, somewhat by way of a negative pregnant, that the general duty to supply janitor services in other instances rests with county courts.

"Finally, we shall assume that among civilized people approved advances and results in scientific research make janitor services in public offices (i.e., the prevention of the propagation and spread of disease from filth) a necessity, and that the Legislature knew and gave effect to that fact. Buildings, under Revised Statutes 1899, section 6710, for clerks' and recorders' offices, being for the preservation of the records of the county, how could this main idea have effect if those records are not to be kept and preserved free from deterioration from filth? Is the general public not interested in and benefited by clean windows, clean floors, clean furniture, clean spittoons, heat in winter and wholesome, healthy air at all times in public offices? It is useless to argue that question. It answers itself. And if the county court, as the agent of the general public in county affairs, without legal right or excuse, refuses to do that duty in the recorder's office, what is the recorder to do? His only sensible course is to do what this recorder did, viz., avoid an unseemly wrangle, pay it out of his own pocket and trust to the courts and the law to reimburse him. The judgment on the first count is affirmed."

Therefore, we conclude that the janitor of the court house receives an appointment similar to the county physician, superintendent of the county farm, county highway engineer, etc.

Class 4 of the County Budget Act (Laws of Mo. 1933, page 341) provides:

"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."

Class 4 refers to the salaries of county officers which are by law payable out of the ordinary revenue of the county. The question arises whether or not this would include the salary of the janitor. We have heretofore held that the words "salaries of all county officers" included both elective and appointive officers.

#### Conclusion

It is the opinion of this department that it was the intention of the Legislature to include in Class 4 all officers and appointees whose salaries under the law the county court is bound to pay out of the general revenue, which includes employment for the fiscal year; hence, it is our opinion that you should include the compensation of the janitor of the court house in Class 4.

## II

### Superintendent of County Farm

Under the terms of Section 12958, R.S. Mo. 1929, it is the duty of the county court to appoint a superintendent of the county infirmary, said section providing as follows:

"Whenever such poorhouse or houses are erected, the county court shall have power to appoint a fit and discreet person to superintend the same and the poor who may be kept thereat, and to allow such superintendent a reasonable compensation for his services."

The above section states that reasonable compensation for the services of the Superintendent shall be allowed, but does not state in what form or in what manner compensation shall be received by the Superintendent. It is a rather unique method that your county compensates its Superintendent, but it may easily come within the term "reasonable compensation".

We have heretofore held that the compensation of the superintendent of the county infirmary should be placed in Class 4, but due to the unusual method which your county uses in employing the Superintendent, it would be difficult for your county, in making up the budget, to determine just what would be the exact

compensation for the year for the Superintendent of the Infirmary. You cannot determine how many inmates will be cared for on the basis of \$14.50 per month - the item of cash rent which you exact from the Superintendent can be determined--in fact, the Superintendent is not paid a salary in the ordinary sense of the word. He appears to board the inmates and the county pays the board.

Class 5 of the County Budget Act (Laws of Mo. 1933, Sec. 2, page 342) 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. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. 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."

#### Conclusion

Under the method employed by your particular county in hiring a superintendent of the county infirmary, it is the opinion of this department that the estimate should be placed in Class 5, and that the same can be termed "contingent, emergency and incidental expense," likewise, the items of clothing, tobacco, etc.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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

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