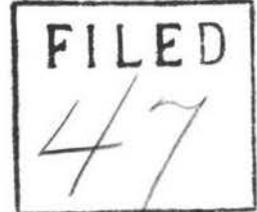


CO. SUPERINTENDENT OF SCHOOLS: section 9467 permits county superintendent to receive not to exceed one-fourth of the annual salary as traveling expenses and clerical hire, or not more than \$3.00 for each teacher under his jurisdiction. If county Sup't. does not claim full amount as actual expenses, he cannot afterwards claim offset by county against him for alleged unlawful salary and fees. If county sup't. has not claimed all actual expenses, he may do so at any time during the year.

December 31, 1936.



Honorable J.P. Kay,  
County Sup't. of Schools,  
California, Missouri.

Dear Sir:

This department is in receipt of your letter requesting an opinion based on the recent audit of your accounts in Moniteau County. Your letter is as follows:

"The County audit has muddled things no little in our county. The auditor changed my salary in the middle of the year. My term starts July 1, yet the auditor started the decrease in salary on January 1, which makes a split salary for one year.

"The audit shows that I owe the County \$96.95 and the same audit shows that for the same two years of the audit that under Section 9467 I had not claimed \$142.00.

"Each and every year I visit my schools four times and I travel 10,000 miles and more. This at 4 cents per mile would have used up my lawful amount and more. The Auditor said that this could be adjusted with the court, but now that the court is also under the whip of the audit, they refuse to do anything.

"My brother is also under the audit and people would say if he advised the court that we were framing them, so I appeal to you to send me or the county court an opinion on which to settle.

"My tenure of office since I was elected shows that I have failed by \$2635.37 to claim all that was allowed me by Section 9467, yet the audit shows that I am a grand rascal.

"Our court meets the last days of this month for settlement. I would thank you for an early reply. I am doing this of my own accord because my brother is attorney for the county."

You do not state in your letter as to what years the audit of your office covers, but you do state "My term starts July 1, yet the auditor started the decrease in salary on January 1, which makes a split salary for one year."

On October 11, 1933, this department rendered an opinion to Honorable Lee Mullins, Prosecuting Attorney, Rock Port, Missouri, holding to the effect that Sections 9463 and 9465, R.S. Mo. 1929 became effective on July 24, 1933. This was due to the fact that the method of arriving at the population of the various counties was based on the decennial census. A copy of this opinion is herewith enclosed.

As stated above, we do not know the reason for the auditor starting the audit of your office as of January 1 but we think it more than possible it should have been started in July. The question of annual salaries is discussed in the case of State ex rel. Harvey v. Linville, 318 Mo. 698, wherein the Court said (l.c. 702):

"Section 10938, Revised Statutes 1909, provides for ascertaining the 'annual' salary. Section 11352, Revised Statutes 1919, says that the superintendent shall receive so much money, dependent upon the population of the county, without saying whether it was per annum. From the context it must be presumed that annual salary was meant. 'Annual salary' as used in said Section 10938, means salary for each year of the incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that 'annual' as applied to salaries means not the calendar years but the years of the incumbent's term, which in the case of relator, begins on the first day of April each year.

"Under Section 11354, enacted in 1919, the relator's salary would be determined by the vote cast at the last Presidential election, which

was in 1916. The vote for that year was 3183, which multiplied by five would give a population of 15,915. At the presidential election of 1920, the vote was 4915, which multiplied by five would give a population of 24,575. By the provisions of Section 11352, the Superintendent of Schools received a salary, in counties having a population of 15,000 and less than 18,000, of \$1350 per annum; and in counties of 24,000 and less than 27,000, a salary of \$1800 per annum. Thus, if the annual salary means salary for the unbroken year he should have received \$2700 for the first two years, and \$3600 for the second two years; a total of \$6300. He received \$1350 annually for the entire four years, or \$5400; leaving a balance due of \$900."

We next proceed to your statement that the audit shows you owe the county \$96.95 "and the same audit shows that for the same two years of the audit that under Section 9467 I had not claimed \$142.00." You further state that "each and every year I visit my schools four times and I travel 10,000 miles and more. This at 4¢ per mile would have used up my lawful amount and more. The Auditor said that this could be adjusted with the court \* \* \* My tenure of office since I was elected shows that I have failed by \$2635.37 to claim all that was allowed me by Section 9467"

Section 9467, R.S. Mo. 1929 provides:

"That the county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent. of his annual salary for traveling expenses and necessary clerical assistance. Provided such allowance shall not exceed three dollars (\$3.00) annually for every teacher under his jurisdiction. The county court shall, upon presentation of his bill properly setting forth his actual expenditures for traveling expenses and clerical hire, draw a warrant upon the county treasury for the payment of same: Provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage shall be four cents per

mile for each mile actually and necessarily traveled."

The above section has never been before the Supreme Court for construction. Therefore, it becomes necessary for us to apply the usual rules of construing a statute. In no event can your traveling expenses and necessary clerical expenses exceed one-fourth of your annual salary--in fact, it may be less if that amount is not ascertainable by allowing \$3.00 for each teacher under your jurisdiction.

You assign no reason for not having claimed the sum of \$142.00 for the two years covering the audit. The statute does not allow you the above stated sum as a matter of course. It recites "The county court shall, upon presentation of his bill properly setting forth his actual expenditures for traveling expenses and clerical hire \* \* \*" Therefore, if each month or each year, you claimed all of the actual expenditures for traveling expenses and clerical hire, then you would not as a matter of course be entitled to the balance of \$142.00.

The same would apply to your mileage. You do not state whether you are claiming the \$142.00 for the reason that you actually expended the same for clerical hire or expenses or were entitled to expend the same and did not do so. Assuming that you actually expended for clerical hire and traveling expenses the sum of \$142.00 but placed no claim with the County for the same, can you now claim it as an off-set against the amount found due the County by the audit, to-wit \$96.95?

Section 9466, R.S. Mo. 1929, which refers to counties of greater population than Moniteau County, permits the Superintendents of such counties a certain sum for clerical help and traveling expenses but states "and the county court shall, on the first Monday in each calendar month, order a warrant on the county treasurer in favor of the county superintendent of public schools for the proportionate amount then due and the same shall be paid by the county treasurer out of the county revenue funds".

Section 9467, R.S. Mo. 1929, which applies to counties of the population of your county, does not state when you shall present your account for clerical hire and traveling expenses. It may be that the statute contemplates monthly, semi-annual or annual accounts. Irrespective of the time you should present the account to the County, we think you are entitled to the amount actually expended during the course of a year for traveling expenses and clerical hire.

The question of whether or not you have actually expended the same is a question of fact which must be determined by you and the county court. Traveling expenses and clerical hire being part

of the emoluments of your office, we do not think you have waived the same by failure to file with the County Court an account of the actual expenditures, as the doctrine of estoppel and waiver is not applicable to a county officer claiming back salary. State ex rel. Summers v. Hamilton, 279 S.W. 33. On the other hand, if you have claimed all of the amount you actually expended in traveling expenses and clerical hire, we are of the opinion, as a matter of course, you could not claim the balance as Section 9467, R.S. Mo. 1929 confines you to actual expenses for traveling expenses and clerical hire.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General.

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