

COUNTY JUDGES: COMPENSATION - Duty to repay money received
as compensation in excess of that authorized by
law.

April 3, 1937.

Hon. Shelt T. Horn,
Presiding Judge,

Hon. Bert Cleveland,
Associate Judge,

Hon. J. L. Blunt,
Associate Judge,

Judges of the County Court,
St. Francois County,
Farmington, Mo.

Gentlemen:

A request for an opinion has been received
from you under date of March 6, 1937, such request
being in the following terms:

"The County Examiners' report that will
be filed in the State Auditor's office
will show that there has been a discrepancy
in the amount charged by the Court for
days attending County Board of Equalization
and Appeals.

"This discrepancy arises from the fact that
charge was made for days attendance for
County Court and Board of Equalization and
Appeals. We are not attorneys but laymen,
who upon coming into office followed the pre-
cedent that had been set by our predecessors.

"Inasmuch as the County Court records will
show that court was held upon the same days
that we had Board of Equalization and
Appeals, and vice versa the Board of Equal-
ization and Appeals record will correspond
with that of the County Court, we do not
feel that it is altogether fair for us to
return the money which has been received
by us for those services. We had no in-
tention of being dishonest or taking any-
thing that we did not feel was due us.
For that reason we would like to know if
it is compulsory by law that we return
this excess money drawn, the amount of
which is some \$140 each.



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"There is nothing set out by statute that limits the earning of a County Court per annum. To serve as a member of the County Court is as you know a hard place to fill and the remuneration is small at best. For us to return this money at this time will work a hardship upon us and we do not believe it is altogether fair since this has been a custom of the County Courts always.

"Your prompt consideration and reply will be greatly appreciated."

As we understand your letter, you are asking us whether you must return to the County money drawn by you as compensation which was admittedly in excess of the amount authorized by law, but which was drawn without any intention to violate the law, and because of an honest mistake due to following the practice of your predecessors in office.

In the case of State ex rel Linn County v. Adams, 172 Mo. 1, 72 S. W. 655 (1902), also involving a case where a county official had drawn, under a warrant approved by the county court, compensation claimed to be in excess of that allowed by law, the Supreme Court stated the facts as follows:

"This is a suit by Linn county against George W. Adams, clerk of the county court of said county, and the sureties on his official bond, to recover the sum of \$167.32 which it is alleged he received as fees of his office in excess of the amount which he is, by law, allowed to retain, and which he refuses to account for. The judgment was for the plaintiff, and the defendants appeal." 172 Mo. 1, l.c. 5.

The court, after analyzing the statutes and deciding that the defendant was not entitled to all of the money claimed by him as compensation, affirmed the judgment of the lower court and held that the county could recover the excess from the defendant and the sureties on his official bond.

We realize that this ruling sometimes would work a hardship on officials who have acted in entire good faith and have, over a period of time, drawn substantial amounts as compensation, and who then find that they have been acting

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under a mistake of law and are obliged to return the money to the public treasury. However, the serious consequences of the contrary rule have doubtless been responsible for the prevailing rule. If a public official could draw large sums from the public funds which were not authorized by law, and then in a suit to recover these funds could avoid repaying them by pleading that he did not know that he was not entitled to them, and had acted under an honest mistake of law, there would be a serious temptation offered to persons in positions of public trust having any control over the disbursement of public funds. Doubtless it is situations of this kind which were responsible for the origin of the rule that every man is presumed to know the law and must take the consequences of not knowing it, harsh as this rule may seem in certain cases.

In conclusion, it is our opinion that where a county judge has received compensation in excess of that authorized by law, he is under a duty to refund it to the county.

Very truly yours,

EDWARD H. MILLER,
Assistant attorney General.

APPROVED:

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