

PROSECUTING ATTORNEYS : Expenses of the Prosecuting Attorneys
EXPENSES SALES TAX : in collection of sales tax not payable
COLLECTIONS : out of State funds.

9-4
August 30, 1937.



Mr. Charles F. Lamkin, Jr.,
Prosecuting Attorney,
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Keytesville, Mo.

Dear Sir:

This office acknowledges yours of the 24th instant, requesting an opinion of this Department as to whether or not Prosecuting Attorneys are entitled to any expenses incurred by them in the performance of the duties imposed upon them by the provisions of Section 40 of the Sales Tax Act of Missouri for 1937 (1937 Missouri Session Acts, page 552).

By Section 40 of said Act, it is provided that:

"upon the request of the Attorney General, it is the duty of each Prosecuting Attorney and Circuit Attorney to forthwith institute and prosecute suits for the collection of the tax."

Section 41 of said Act, provides that:

"The expenses necessarily incurred by the Auditor and Attorney General, and his assistants in charge of litigation that may arise hereunder, shall be paid out of appropriations made by the General Assembly."

Upon the examination of appropriations made by the 59th General Assembly, we fail to find that any moneys were appropriated for the payment of the expenses of Prosecuting Attorneys in performance of duties pertaining to sales tax collections.

Upon the question of the intention of the legislature to pay this expense out of State funds, we may consider remarks of Judge Leedy J. in the case of State v. Smith, 90 S. W. 2nd 1. c. 409:

"The view that such was not the intention was fortified by an examination of the Appropriation Acts of the 58th General Assembly, which show that, that body made no appropriation for such purpose."

The foregoing statement was made by the court in considering the question of whether or not the Legislature intended that the State Highway Department should pay the 1% sales tax upon its purchases.

By analogy the 59th General Assembly having failed to make an appropriation for payment of the expenses of the Prosecuting Attorneys in performing the duties imposed upon them by the 2% Sales Tax Act, it would seem that the Legislature did not intend to pay such expense out of State funds and the appropriations made by the 59th General Assembly.

The duties of the Prosecuting Attorneys with reference to matters pertaining to the State are set out in Section 11316 R. S. Mo. 1929, which section is as follows:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. When any criminal case shall be taken to the courts of appeals by appeal or writ of error, it shall be their duty to represent the state in such case in said courts, and make out and cause to be printed, at the expense of the county, and in cities of over 300,000 inhabitants, by the city, all necessary abstracts of record and briefs, and if necessary appear in said court in person, or shall employ some attorney at their own expense to represent the state in such courts, and for their services shall receive such compensation as may be proper, not to exceed twenty-five dollars for each case,

and necessary traveling expenses, to be audited and paid as other claims are audited and paid by the county court of such county, and in such cities by the proper authorities of the city."

From the foregoing section, it seems that the duties of the Prosecuting Attorney in attending to sales tax matters in his county are imposed on him the same as attending to any other matters in which the State of Missouri is a party.

Although the Legislature did not make an appropriation to pay for these expenses, such as postage, stationery, etc., yet it has been the rule of the courts that such expenses be not imposed upon the officials but be paid by the county (See opinion of this Department dated May 25, 1935 which is enclosed with this opinion).

In all of our research upon this subject, we find that the courts follow the rule that official expenses cannot be imposed upon an official without reimbursement, even though the statute is silent on this subject (See cases cited in enclosed opinion).

As the County Treasury is relieved of some of its burden because some of the receipts from the sales tax go back to the county by way of taking care of relief obligations and schools, it would appear that the Legislature intended that the expenses of the Prosecuting Attorney incidental to his performance of duties pertaining to the sales tax should be paid out of the County Treasury as other incidental expenses of said office are now paid.

CONCLUSION.

It is, therefore, the opinion of this Department that the expense of the Prosecuting Attorney in performance of sales tax duties for the State are not payable out of the State appropriations of the 59th General Assembly, but that such expenses may be paid out of the County Revenue Fund, as expenses are now paid to Prosecuting Attorneys for attending to State and County matters.

Respectfully submitted,

TYRE W. BURTON.
Assistant Attorney General.

APPROVED:

J. E. TAYLOR