

COUNTY COLLECTORS AND COUNTY ASSESSORS: Entitled to stationery
Record Books, Printed
Receipts and Stamps from
County Treasury.

January 20, 1937.

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Honorable Morgan M. Moulder
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
January 9, 1937, which reads as follows:

"Please advise me as to whether or
not county officers (the county col-
lector and county assessor) who re-
ceive fees and commissions as the
sole compensation for their services
as such county officers are entitled
to charge the county for stationery,
records, receipts, postage, etc."

County Courts in Missouri are limited in their power
to expend county funds. Article VI, Section 36 of the
Missouri Constitution provides in part:

"In each county there shall be a
county court, which shall be a court
of record, and shall have jurisdic-
tion to transact all county and such
other business as may be prescribed
by law. * * * #"

It is a general rule of law that one who asks pay-
ment of a claim against a county in Missouri must show
some Statute authorizing the claim, or show that the
claim arises from a contract which finds authority of
law. In Person v. Ozark County, 82 Missouri, 491, l. c.
492, the Supreme Court of Missouri said:

"In 1880, the subject matter of the
claim passed upon by the county court,
could not be made the basis of a law-
ful demand against the county. There

being no authority whatever, under any circumstances, for such an allowance, as was made to the sheriff of Oregon county, the warrant drawn in pursuance thereof was a nullity. It was a mere gratuity, and cannot be enforced against the county. The failure of the legislature to make provision for the payment of such necessary expenses as were incurred by the sheriff in this case, was doubtless an accidental omission, as they are now provided for by the act of March 8th, 1883, (Sess. Acts 1883, p. 80); but this fact cannot alter our judgment, which must follow the law in force at the time the warrant was issued."

Our Supreme Court has held that a probate judge in Missouri was entitled to be furnished with books, records, stationery, postage, etc., under a Statute providing the probate court with certain stipulated office necessities, "and other necessities". The court in construing that statutory phrase "and other necessities" in *Saylor v. Nodaway County*, 159 Mo. 520, l. c. 524; 60 S. W. 1057, said:

"By the same rule of interpretation the judgment of the circuit court herein must be reversed, for in this case it was agreed at the trial, that the stamps, for which the probate judge presented his bill to the county court for allowance, were used in the discharge of the official business of his office and that they were necessarily required in the performance of his official duty. While everything that an official may use to facilitate him in the accomplishment of the work he is directed by law to perform, may not be said to fall within the meaning of the term 'all other necessaries,' as used in section 1726, supra, certainly everything that he is directed to use, or that must necessarily be used in the performance of a designated act

or acts required to be performed by him, should be held to be included within the meaning of that term, unless something previously or subsequently used in the section or act so providing, should clearly indicate a contrary intention.

"To suggest that an officer is oftentimes called upon, and may be compelled, to perform certain services for which no compensation has been provided, and for which he can collect nothing, is no answer to the proposition that an officer should not be compelled to directly contribute his own means for the public welfare without recompense."

In the case of *Ewing v. Vernon County*, 216 Mo. 681, the county recorder had sued the county for reimbursement for expenditures which he made for janitor service and stamps, and he took judgment in the lower court. The Missouri Statutes provide that he "keep his office at the seat of justice in each county" and the Statutes also provided that he deliver deeds when recorded "to the party or his order". He took judgment in the lower court. On appeal the judgment of the lower court was affirmed and the Supreme Court said at 694:

"It is argued by defendant that it ought not to pay for stamps used by the recorder in his official business. The evidence disclosed that the plaintiff charged up to the county his stamp account for returning recorded instruments to those residing in the county. * * * The legal duty of an officer is to be obliging and courteous. * * *. Conceding there are no fees allowed for the delivery of a deed after recording or for transmitting a deed from one county to another, yet the statute does not contemplate that he should pay money

out of his pocket in the performance of his official duty. Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo. * * * *. Further, if the custom was to deliver a deed to the U. S. Government to be transmitted by mail, as seems to have been the case, then such delivery is reasonably well within the contemplation of the statutory duty to deliver 'to the party or his order.'

"It must not be expected that this court will throw down statutory safeguards for the protection of the treasuries of the counties of this State, or in any way countenance looseness in their business affairs. But on the other hand we shall not construe our statutes so as to produce a harsh or ridiculous result and one not within the fair meaning of our laws. * * * *.

"The statute relating to recorders ordains that he 'keep' his office, etc.; the word keep is one of wide and flexible meaning, one meaning being to maintain, to provide for. It involves the idea of continued effort in that line, i. e., that the office shall be carried on, enjoyed, etc. In this view of the case, the great breadth of the statutory word 'keep' permits of the notions that it was the legislative intent that the recorder of deeds should have the power to maintain and provide for his office in a reasonable way for the benefit of the public, and (by implication) at

the public expense, where county courts violate or renounce their duty in that regard."

Let us look to the Statutes as they relate to county collectors and county assessors and see if they prescribe that these officers be furnished with stationery, record books, printed receipts, postage, etc. We find no specific provision of law to this effect, but we do find in the Statutes that these officers are required to make written entries in record books, to execute written receipts and to execute written papers which require the use of stationery.

Section 9912 R. S. Mo. 1929, makes it the duty of the county collector to mail tax statements and tax receipts, and reads:

"It shall be the duty of the collector to furnish to all nonresident taxpayers a statement of the amount of taxes assessed against any tract of land or town lot in his county for any year or years during which he is collector, and send the same by mail to the address of any person applying to him by letter for the same; and if no taxes are due on any such tracts or lots, he shall answer such letters of inquiry, stating the fact; and whenever any funds are remitted by mail or otherwise to any collector for the payment of any taxes appearing to be due on his tax book, it shall be his duty to receive the same and send a receipt therefor by mail to the person remitting the same; Provided, that he may charge all sums which he may have to pay for postage as costs against the person applying or remitting to him, but no other costs."

As to the county assessor, Section 12330 R. S. Mo. 1929, provides "that all necessary blank lists, books and stationery shall be furnished by the county clerk, to be paid for out of the county treasury."

CONCLUSION.

It is true that county courts in Missouri must limit their expenditures to those expenditures where there is statutory authority for same, but it is just as true that this "authority of law" for a county to expend money to reimburse county officers for necessary expenditures made in keeping and maintaining their office is usually legally justified by virtue of a broad construction of the existing statutes. In the Nodaway County case, supra, the probate judge had the statutory authority to make "necessary expenditures", and the Supreme Court construed this phrase to mean the county court is to pay for postage stamps. In the Vernon County case, supra, the county recorder had statutory authority to "keep" an office, and the Supreme Court construed this word to mean that the county court was to pay him for janitor service and stamps, as these items were said to be indispensable keeping his office.

The courts are prone to liberally construe the Statutes so that county officers are not forced to personally bear office incidental expenses in order that their office be managed efficiently, and as the Statutes provide. We take the same liberty as the courts, in our logic.

This department is of the opinion that the county collector and county assessor are legally entitled to look to the county court for stationery, record books, printed receipts and postage necessary to the courteous and efficient maintenance incidental to their respective statutory duties. In performing their public statutory duties it is reasonable that these necessary incidental office expenses be borne by the public for whose benefit the service is required and performed, since these officers receive no fees conditioned upon these articles being a personal expenditure.

Respectfully submitted

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

WM. ORR SAWYERS
Assistant Attorney General.