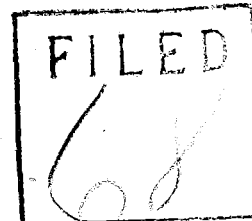


PROSECUTING ATTORNEY:

Is entitled to re per stenographic hire and the county court can pay the same from any surplus funds or out of Class 6, providing the prosecuting attorney has complied with the terms of the Budget Act in compiling estimate.

September 16, 1937.

10/19



Honorable Edwin C. Orr  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Sir:

This Department is in receipt of your letter of September 10th, wherein you request an opinion based on the following facts:

"I wonder if you would please give me an opinion as to whether or not I am entitled to my stenographic hire in this county in view of the particular facts of my case; when I filed my budget the beginning of the year, I put in there a reasonable amount for my stenographer. The County Court, in the absence of statutory authority, struck that item from the budget. I am wondering if under those circumstances I would be entitled to be reimbursed that amount of money which I am now paying.

"What effect would the new budget law have upon this situation, and what authority would the County Court have to pay money in the event there was a surplus left over at the end of the year?"

\* \* \* \* \*

P. S. - If it is possible to draw a distinction between the claimant who did set up his claim in his budget, and the one who did not set up the item in his budget, it would be very helpful in this particular instance."

On April 24, 1936, this Department rendered an opinion to Honorable Forrest Smith, State Auditor, in which it was held in effect that if it was necessary for the prosecuting attorney to hire a stenographer or other clerical assistance to perform certain necessary duties in his office and as a result he was compelled to pay such expenses from his own funds, he was entitled to reimbursement from the county in reasonable and necessary amounts.

We, therefore, in view of the above mentioned opinion, do not consider in rendering you this opinion the question as to whether or not it constitutes a legal claim by you against the county, for the reason that we must assume that it is a legal claim.

In determining whether the claim should be paid by the county court it is necessary to consult the County Budget Act passed by the Legislature in 1933.

Under Section 3, Laws of Missouri, 1933, page 342, it is made the "duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the 15th day of January each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year \* \* \* \*"

The facts as contained in your letter show that you complied with the terms of Section 3, quoted supra, and included a reasonable amount for stenographic expenses.

Section 8, Laws of Missouri, 1933, page 345, among other provisions, contains the following:

"The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes 1 and 3 below that provided for herein."

It appears from your letter that the county court struck the stenographic item from your budget for the reason that the Statutes of Missouri did not give you the authority to hire and pay a stenographer out of the county funds. By the terms of Section 3, hereinbefore referred to, you made an attempt and did comply with the various steps as set forth in the Budget Act. Disregarding the reason for the County Court striking the stenographic hire from your budget, we are of the opinion that you could not be precluded from asserting and receiving payment of a valid claim by reason of a failure to comply with the budget act, as the facts show that you did comply with it. We are, therefore, of the opinion that you are entitled to be reimbursed in a reasonable amount for the money you have expended for stenographic hire.

The funds from which payment might be made, or the manner of payment, is discussed in the conclusion reached in an opinion by this Department to Honorable Henry Cain, Prosecuting Attorney of Stoddard County, in which it was held that the use of surplus funds remaining after all provisions of the Budget Act had been complied with, could be used for certain purposes. We are enclosing a copy of the opinion for the reason that it discusses the manner in which a surplus may be used by the county court. It also contains the most recent decision by the Supreme Court, styled Harry Traub v. Buchanan County, Missouri, No. 34883, in which it is held that the Budget Act must be strictly complied with.

As to your postscript question as contained in your letter, we are of the opinion that if an officer does not comply or attempt to comply with the Budget Act, especially Section 3, the contents of which were hereinbefore quoted, that such officer could not obtain reimbursement or compensation for the year in which he failed to make such estimate. Section 3, supra, p. 342, also contains the provision that,

"No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished."

Sept. 16, 1937.

But the facts which you present show conclusively that you made an attempt to comply in every respect with the terms of the Budget Act. Therefore, that defense could not be offered against your claim as in the case of an officer failing to include such item in his estimate.

Having heretofore ruled that you were entitled to reimbursement, based on the opinion to Honorable Henry Cain, we are of the further opinion that any surplus remaining at the end of the year can be used by the county court to reimburse you for a reasonable amount for stenographic hire.

We further call your attention to an opinion recently rendered to you in which the question of the surplus at the close of the fiscal year in the funds in class 6 could be, by complying with the provisions of class 6, used for the payment of the county treasurer and the circuit clerk. The law's logic and reason as contained in that opinion is applicable to the question which you present, insofar as the manner of reimbursing you for stenographic hire is concerned.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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