

PROSECUTING ATTORNEY:

In a county containing a population of 11,764, the county court cannot grant an extra fee to the prosecuting attorney for an opinion rendered to the county court and the Federal Government.

January 28, 1938

Mr. W. S. Pelts,
Prosecuting Attorney,
Greenfield, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 25, 1938 asking for an official opinion, which letter reads as follows:

"I would like an opinion of your office as to whether or not the county court of Dade County, when it had its project to build a courthouse here in Dade County, which the people had voted bonds to the amount of \$75,000.00 and the United States Government contributed something over \$30,000.00, could appoint an attorney who was the prosecuting attorney at the time to furnish a statement with his certificate, reporting that the project was nearing completion and the contract between the county, the United States Government and the construction company had been carried out properly, that there were no suits pending the circuit court and no prospective suits or claims pending in connection with the courthouse project.

It was necessary for the court to appoint an attorney to furnish this information in order to secure from the Government its share of this project. The court on July 18, 1935, in regular session, appointed me, prosecuting attorney at the time, as agent and attorney for the courthouse.

I made this investigation and two reports with my certificate attached and upon receipt of those reports the United States



Government turned to the county court its share of this project, which will be evidenced by the copy of the record enclosed.

They paid me One Hundred (100) Dollars for this work, which was a very modest and meager fee, and assured me when they appointed me as attorney for the courthouse that this came out of the courthouse fund and had nothing to do with the funds of Dade County. When in fact, without me noticing where the money came from, they paid me One Hundred (100) Dollars out of the general revenue fund of the county. They are now attempting to have me pay back this money because I was prosecuting attorney of Dade County at the time."

Section 11364 R.S. Mo. 1929 provides as follows:

"The county courts of all counties in this state containing one hundred thousand inhabitants or more, according to the last decennial census of the United States, and of all such counties as may hereafter contain one hundred thousand inhabitants or more, may, in their discretion, appoint and commission as other officers are commissioned by the county court a county counselor, who shall be a person learned in the law, at least twenty-five years of age, and who shall hold his office for two years, and until his successor is appointed, commissioned and qualified: Provided, that in all counties containing less than one hundred thousand inhabitants the office of county counselor is hereby abolished."

According to the last census, which was 1930, Dade County only had a population of eleven thousand seven hundred and sixty four (11,764) and according to section 11364, as set out above, could not have a county counselor.

Section 11318 R.S. Mo. 1929, in reference to the duties of a prosecuting attorney, provides as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace when the state is made a party thereto:*****."

Section 11314 Session Laws of 1933, page 178 provides that the prosecuting attorney of Dade County according to the population, should receive twelve hundred dollars (\$1200.00) a year as salary. According to Section 11318, as above set out, it is the duty of the prosecuting attorney to represent the county court in all matters and should not receive extra pay.

Section 48, article 4 of the Constitution of the State of Missouri especially prohibits the enactment of the legislature which would grant extra compensation. This section reads as follows:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service had been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

This section is discussed in the case of State ex rel. Bradshaw, Warehouse Commissioner v. Hackmann, State Auditor, 208 S.W. 445.

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According to the above authorities set out, the county court did not have authority to pay you one hundred dollars (\$100.00) out of the county fund as extra compensation in addition to your regular salary.

CONCLUSION

It is, therefore, the opinion of this office that the county court can, by proper procedure, recover the one hundred dollars (\$100.00) paid to you unlawfully.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:DA