

CIRCUIT CLERKS: Expenses of Circuit Clerk of Jasper County.

August 30, 1938

Hon. Ray E. Watson
Judge Division No. 1
Circuit Court Jasper County
Webb City, Missouri



Dear Sir:

We have your request of August 15, 1938, for an opinion which is in part as follows:

"Representatives of the State Auditor's office have been auditing county records for several weeks and the question has again arisen concerning the propriety of the county court making any allowance of approximately \$112.50 each year to the circuit clerk for travelling expenses. In this county we have two divisions of circuit court and court is held in two places, three terms at Joplin and three terms at Carthage each year. The clerk lives at Carthage and has his principal office there, but it is necessary for him to divide his time between the Carthage and Joplin office, having only three deputies to care for the two offices, each of which must be kept open at all times. It has been the custom for a great many years for the county court to allow travelling expense to the clerk for duties performed out of the county seat. This is approved by the Circuit Judges and the Budget officer and paid by the County Court and without any question is equitable. The question arises as to its legality."

We note the population of Jasper County is approximately 73,000, and by the terms of Section 2028 R.S. Missouri 1929, Circuit Court is held in both Carthage and Joplin.

The salary of the Circuit Clerk in your County is fixed by Section 11786 Laws of Missouri 1937, page 444. We find no statute authorizing the payment of expenses. The question arises therefore, can expenses necessarily incurred by a public officer in the discharge of his duties be recovered without express authorization found in some statute?

It is now recognized in Missouri that in the payment of compensation, salary or fees to an officer there must be statutory authorization authorizing such payment. Williams vs. Chariton County, 85 Mo. 645; Hill vs. Butler County, 195 Mo. 511; State ex rel. Stewart vs. Wofford, 22 S.W. 486, 116 Mo. 220; State ex rel. Troll vs. Brown, 47 S.W. 504, 146 Mo. 401; Holman vs. City of Macon, 137 S.W. 16, 135 Mo. App. 398; Gammon vs. Lafayette County, 76 Mo. 676; King vs. Riverland Levee District, 279 S.W. 195.

The question is, does this strict rule for the payment of compensation to public officers apply with equal force to the allowance of expenses or the reimbursement of public officers for expenses incurred in the performance of their official duties. We think a different rule applies where the question of expenses are involved. In 46 C.J. p. 1018, Section 246, the rule is stated as follows:

"But where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make the expenditure out of his own funds and have reimbursement therefor, and where a public duty is demanded of an officer without provision for any compensation, the expense must be borne by the public for whose benefit it is done."

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The above rule has been consistently followed in this state. County of Boone vs. Todd, 3 Mo. 140; Hark Reader vs. Vernon County, 216 Mo. 696; Buchanan vs. Ralls County, 283 Mo. 10, 222 S.W. 1002.

In Ewing vs. Vernon County, 216 Mo. 681, l. c. 694, the Court said:

"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."

It would appear that since the Circuit Clerk of Jasper County is required by law to be in two different places, to-wit, Joplin and Carthage, for different terms of court, that the expenses of the Circuit Clerk incurred in travelling between the two offices (as distinguished from travelling from his home directly to either office) should be matters of expense for which he should be reimbursed.

It is therefore the opinion of this office that the Circuit Clerk of Jasper County is entitled to reimbursement for expenses necessarily incurred in the performance of his duties in travelling from the Circuit Clerk's office in Carthage to the Circuit Clerk's office in Joplin and return. What is a reasonable allowance for such expenses is largely within the discretion of the County Court.

Respectfully submitted,

APPROVED:

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