

COUNTY COURTS: County judges and counties of over twenty thousand (20,000) population are entitled to mileage for each necessary trip made.

October 30, 1939

11-3



Hon. Paul J. Clay
Clerk of the County Court
St. Francois County
Farmington, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated October 28, 1939, which is as follows:

"We note, that in 'Laws of Missouri, 1939', Section 2092 that, 'in addition to the salaries herein authorized to be paid Judges of the County Court in Counties having less than 75,000 inhabitants said Judges shall receive five cents per mile for each mile necessary traveled in going to and returning from the place of holding county court'. As you know, St. Francois County has an estimated population of 40,000. Our Court is one of the counties in the state in which county court is in session every day. We would like your interpretation of this law, stating whether or not judges are entitled to mileage each day from their residence to the County seat. That is the way we have interpreted same. However, we would like your verification before warrants are issued to the Court for mileage. An early reply will be deeply appreciated"

The statute referred to is found in Laws of Missouri, 1939, at page 332, and reads as follows:

"In all counties of this state now or hereafter having seventy-five thousand inhabitants and less than ninety thousand inhabitants, the judges of the county court shall receive an annual salary of twenty-five hundred dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, under the provisions of Section 7892, R. S. 1929. In all counties of this state now or hereafter having ninety thousand inhabitants and less than one hundred fifty thousand inhabitants, the judges of the county court shall receive an annual salary of three thousand dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, as provided by section 7894. In all counties of this state now or hereafter having one hundred fifty thousand inhabitants, and less than three hundred thousand inhabitants, the judges of the county court shall receive an annual salary of forty-five hundred dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, under the provisions of section 7892, R. S. 1929, and in lieu of all other fees, compensation, or salaries, heretofore allowed by law to said judges, except the per diem as allowed to said judges as members of the board of equalization and board of

appeals. In all counties of this state now or hereafter having more than three hundred thousand inhabitants, the judges of the county court shall receive an annual salary of four thousand eight hundred dollars. Said salary of four thousand eight hundred dollars to be in lieu of the per diem heretofore allowed by law to such judges of the county court, and in lieu of the salary as road overseers heretofore allowed by law to said judges, as provided in section 7897, R. S. 1929, and in lieu of all other fees, or salaries, heretofore allowed by law to said judges, except the per diem allowed to said judges as members of the board of equalization and the board of appeals. The salaries herein fixed for the judges of the county court in all counties of this state having more than seventy-five thousand inhabitants shall be paid in equal monthly installments as the salaries of other county officers are paid. In all counties of this state now or hereafter having less than seventy-five thousand inhabitants, the judges of the county court shall receive for their services the sum of five dollars per day for each day necessarily engaged in holding court. In addition to the salaries herein authorized to be paid to judges of the county court in counties having seventy-five thousand inhabitants or more, and in addition to the per diem herein authorized to be paid to the judges of the county court in counties having less than seventy-five thousand inhabitants, said judges shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court; Provided that in all counties now or hereafter having a population of twenty thousand inhabitants or less such mileage shall be charged only once for each regular term and such mileage shall not be charged over eight times per year for special or adjourned terms.*

An examination of the former statute reveals that it is only the last sentence which has been amended on at least three occasions by the Legislature. In 1931, the classification according to population was changed by substituting counties having a population of seventy-five thousand (75,000) population for the former minimum of sixty thousand (60,000).

In 1933, Section 2092 was again amended so that judges of the county court in counties having a population of seventy-five thousand (75,000) inhabitants or less should receive five cents (5¢) per mile for each mile traveled in attending court, except that such mileage could be charged only once in each regular term.

We also note that the population of the various counties is to be determined by the last decennial census, in arriving at the compensation to be received by the judges of the various county courts. This Section 2092, found in Laws of Missouri, 1933, at page 208, has not been repealed. We mention this because of your statement that the "estimated" population of St. Francois County is forty thousand (40,000).

This examination shows that the amendment made by the 1939 statutes removes the qualification that mileage may be charged only once for each term of court, and substituted therefor a proviso that county judges in counties having a population of twenty thousand (20,000) or less are entitled to mileage only once for each regular term, and only eight (8) times per year for special or adjourned terms.

Search of the cases construing the old section 2092 reveals that it has been mentioned only three times by our courts, to wit, in the case of Young v. Greene County, 119 S. W. (2d) p. 369, in Ruffin v. Greene County, 119 S. W. (2d) p. 374 and in Nodaway County v. Kidder, 129 S. W. (2d) p. 857. None of these bear directly on the point in question, and it becomes necessary to review the applicable rules of statutory construction.

The word "provided" is defined in *Ex Parte Andrews*, 18 S. W. (2d) 580, l. c. 582, as follows:

"And in discussing the meaning of the word, the Supreme Court of the United States in an early case used this language: 'The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provision of it, or to qualify the operation of the statute in some particular.' "

It would seem, therefore, that the concluding proviso clause in the section as last amended in 1939, which restricts the operation of the statutes in counties of twenty thousand (20,000) or less, enables us to draw the conclusion that the foregoing part of the final sentence gives county judges their mileage fees in all cases where they necessarily attend court, without restriction.

Another familiar rule of statutory construction is the maxim "expressio unius est exclusio alterius" or "the expression of one thing is the exclusion of the other". *State ex inf. v. Sweaney*, 270 Mo. l. c. 692.

The Legislature, by excluding counties of twenty thousand (20,000) and less from the operation of statutes, plainly intended that it apply to counties of more than twenty thousand (20,000).

CONCLUSION

Therefore, it is our conclusion, from the foregoing, that county judges in counties having a population of more than twenty thousand (20,000) inhabitants, according to the last decennial census, are entitled to five cents (5¢) per mile for each mile necessarily traveled in going to and returning

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from the place of holding court without restriction
as to the number of times traveled.

Respectfully submitted,

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APPROVED:

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RLH:RV