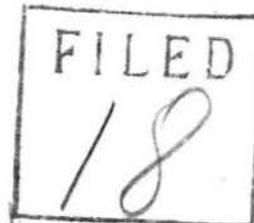


COUNTY COURTS: Judges of Barton County Court are entitled to receive 5¢ mileage in traveling to and returning from holding county court: may be charged only once for each regular term and not for special or adjourned terms, may not collect mileage for making trips to look after county's business or pay a third person mileage to transport the county court.

January 6, 1939



Honorable J. Carrol Combs  
Prosecuting Attorney  
Barton County  
Lamar, Missouri

Dear Sir:

This department wishes to acknowledge your request for an opinion wherein you state in part as follows:

"The deputy recorder of our county was in my office yesterday afternoon consulting with me concerning the amount that should be charged by the recorder of deeds for marriage licenses. I note that the state auditors have also raised this question in several counties in which the recorders have been making a charge of \$2.00 for the issuance of a marriage license and the recording of the same, with the certificate attached thereto.

"I would like to have the opinion of your office as to the amount which the recorder of deeds should charge for issuing a marriage license and the recording of the same. There is no question in my mind as to the meaning of Sec. 2979 which provides that the recorder shall receive \$1.00 for recording the license, but the question as I see it, is whether or not under Sec. 11804, which provides

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that for every certificate and seal the recorder shall receive 50¢, where both parties make their affidavit for a license, the recorder can charge the 50¢ fee for each affidavit, and if one or both of the parties are under age and the affidavit of a parent is necessary, whether or not the recorder is entitled to charge a 50¢ fee for the certificate and seal on the affidavits of the parents. If this is true, it would be possible for the recorder to charge \$3.00 for issuing and recording the marriage license."

## I.

The above questions are fully answered in an opinion rendered by this department under date of March 26, 1935, to Mr. John E. Bohon, Recorder of Deeds, Sedalia, Missouri, a copy of which is enclosed.

## II.

Your letter further states:

"I would also like to have the opinion of your office concerning the mileage to be charged by the county court of the county in attending court, as to whether or not I am right or wrong in my opinion that the county court can charge mileage only once for each regular term, but if for any reason a special term is called after the regular term has been adjourned, no matter how many special terms are held by the court,

that the judges are entitled to charge their mileage in attending court for each special term."

Section 11780, R. S. Mo. 1929, contains the following provision:

"For each mile necessarily traveled in going to and from the place of holding such court ..... .05

Provided, that such mileage shall be charged only once for each term of court."

Barton County, according to the last decennial census, contained a population of 14,560 inhabitants. Section 2092, Laws of Missouri 1933, page 205, provides in part:

" \* \* \* 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 such mileage shall be charged only once for each regular term, and no mileage shall be paid for any special or adjourned term."

From the foregoing, we are of the opinion that, Barton County having a population of less than 75,000 inhabitants, judges of the county court are entitled to receive five cents (5¢) per mile for each mile necessarily traveled in going to and returning from the place of holding county

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court and such mileage may be charged only once for each regular term and the judges are not entitled to mileage for any special or adjourned term.

III.

Your letter further states:

"I would also like your opinion on whether or not the members of the county court are entitled to charge the county mileage in making trips to look after the county's business where a term of court is not held, and whether or not the court is authorized to employ and pay a third person mileage to transport the county court to different places in the county to make an inspection or to look after the necessary business of the county."

We have searched the statutes diligently in an effort to find any authority for members of the county court to charge the county mileage in making trips to look after the county's business where a term of court is not held, and to employ and pay a third person mileage to transport the county court to different places in the county to make an inspection, or to look after the necessary business of the county. We have failed to find any statute which would constitute any authority for such charge. The office of judge of the county court was created by statute; likewise, the duties and compensation are controlled entirely by certain sections. It is a well recognized principle of law that when the fees or compensation are demanded by a public officer said officer must be in a position to point to the statute, as was said in the case of State ex rel. Linn County v. Adams, 172 Mo. 1.c. 7:

"In order to maintain this proposi-

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tion some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. (Jackson County v. Stone, 168 Mo. 577; and other cases cited.)"

The statutory authority, allowing members of the county court mileage in making trips to look after the county's business where a term of court is notheld, and employing and paying a third person mileage to transport the county court to different places in the county to make an inspection or to look after the necessary business of the county, being absent, we are of the opinion that the members of the county court can not legally collect any mileage for said purposes.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General  
MW:RT