

COUNTY SURVEYOR: Duty of county court to furnish surveyor supplies and instruments.

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Mr. David A. Dyer
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Dear Sir:

We have your request for an opinion, which in part is as follows:

"The County Surveyor of St. Charles County has requested the County Court to furnish his office with various supplies at the cost of the county. These supplies include surveying equipment such as surveying transit, ranging poles, leveling rod, tape, etc., drawing supplies and office equipment, including typewriter and calculator. The County Court has asked me for my opinion as to whether it is the duty of the court to furnish his office with such supplies."

It is a strict rule of construction in this state, consistently adhered to by the courts, when dealing with compensation for special officials that an officer claiming compensation must be able to place his finger upon the statutory authority for same. An officer can recover compensation only when specifically authorized by statute. Williams vs. Chariton County 85 Mo. 645 (1885); State ex rel vs. Adams 172 Mo. 1 (1903); Hill vs. Butler County 195 Mo. 511 (1906). It is said that an officer in Missouri is presumed to render his services gratuitously unless some specific statutory authorization is found for the payment of such services. King vs. Riverland Levee District 279 S. W. 195, 196 (1926).

The courts have adopted and followed an entirely different rule with reference to the allowance of expenses; and items which could not reasonably have been foreseen by the Legislature, and which may vary from time to time depending upon the economic trend of the country. The general rule as to such matters is stated in 46 C. J. page 1018, Section 246 in the following language:

"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."

This rule has been strictly adhered to in Missouri. County of Boone vs. Todd 3 Mo. 140 (1833); Hark Reader vs. Vernon County 216 Mo. 696 (1909); Buchanan vs. Ralls County 283 Mo. 10, 222 S. W. 1002 (1920).

In Ewing vs. Vernon County 216 Mo. 681, ⁶⁹⁵~~694~~, the court in commenting upon this difference made between "compensation" and "expenses" 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. Such, we take it, is the doctrine of the cases cited in the former paragraph of this opinion, and it comports with reason. Further, if the custom was to deliver a deed to the U. S. Government to be transmitted by mail, as seems to have been the case, then such

delivery is reasonably well within the contemplation of the statutory duty to deliver 'to the party or his order.'

It must not be expected that this court will throw down statutory safeguards for the protection of the treasuries of the counties of this State, or in any way countenance looseness in their business affairs. But, on the other hand we shall not construe our statutes so as to produce a harsh or ridiculous result and one not within the fair meaning of our laws.

The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

We next pass to the question of whether or not the county surveyor is required by law to perform any duties which require the use of surveying equipment such as surveying transit, ranging poles, leveling rod, tape, etc. We find that surveyors are dealt with in Chapter 75, R. S. Mo. 1929, in Sections 11571 to 11607, inclusive. He is elected to a public office for four years. He is required to take oath and give a bond, and in addition thereto, among other things, he will deliver to the Recorder of Deeds all the records, books and papers, appertaining to his office. He is required to execute orders of the county court and re-survey any tract of land, the title of which is in dispute. Sections 11579 and 11580, R. S. 1929. He is required to keep certain records of surveys made by him and his deputies

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in a well bound book with a convenient index, and is required to give the distances to points and required to measure the distance to houses standing in the immediate vicinity in surveying town lots, Section 11583 R. S. 1929. In the performance of his duties, he is required to use chainmen and the compensation is fixed by law, Sections 11586 and 11587, R. S. 1929. In subdividing a section of land, he is required to run a random line in the direction of the opposite corner to a point at right angles therefrom. Section 11593 R. S. 1929. In subdividing land into quarter sections, he is required to set a temporary post at every forty chains, Section 11594, R. S. 1929. In subdividing a section into eight parts, he is required to set posts at twenty chains, Section 11595, R. S. 1929. The use of a compass is required in the performance of some of his duties, Section 11602, R. S. 1929. The compensation of a surveyor is fixed in Section 11607.

Thus, from the above examination of the surveyors duties, it is apparent that he is called upon to perform, in his official capacity, certain technical feats, such as accurately measuring distance, running straight lines, locating corners of sections, all of which the law requires to be done with scientific apparatus; instruments which must be accurate because certified copies thereof are made competent evidence, Section 11592 R. S. 1929. There is no more duty on the surveyor to furnish a compass for the official discharge of his duties than there is upon any county officer to furnish a typewriter, or a seal.

It is, therefore, the opinion of this office that it is the duty of the county court to furnish the county surveyor with such surveying equipment as may be reasonable and necessary for the performance of his official duties as county surveyor.

Respectfully submitted,

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APPROVED:

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