

CIRCUIT COURT REPORTER - Salary in 31st District.

January 8, 1940

Mr. Ramey Smith
County Clerk
Douglas County
Ava, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of January 4, 1940, which reads as follows:

"We have been faced, during the year 1939, with a problem in connection with the amount and method of paying the salary of our Circuit Court Reporter.

"When we were audited last time the State Auditor found our Court Reporter to be drawing a salary of \$3000.00, when in his opinion the law only allows our Court Reporter a salary of \$2500.00. We were advised by your office and by the State Auditor that we should only budget our Court Reporter our proportional part of \$2500.00 which we did. At the same time we transmitted a certified copy of a County Court Order to this affect to our Circuit Judge and one to our County Treasurer. The Circuit Judge, however has persisted in issuing the Court Reporter his Script in the same manner and amount as was done in previous years.

"The County Clerk of Howell County tells me that in that county the Circuit Judge's Script is presented to the County Court as a claim and the County Clerk issues a County Warrant on Class 4 funds for same.

However, in this county the Circuit Judge issues the Court Reporter his Script which is presented to the County Treasurer for payment, and the County Court of this county has nothing at all to do with payment of the Court Reporters Salary or Expense.

"Now, what we want to know is:-

.Should the Court Reporter present his SCRIPT, issued by the Circuit Judge, to the County Court and in turn get a County Warrant on Class four fund or should the County Treas. honor the Circuit Judges SCRIPT?

"In case the County Treasurer is required by law to honor the Circuit Judges SCRIPT:-
How are we to keep from paying our Court Reporter in excess to the amount allowed him by the Statutes?
Should the Treas. protest or pay warrants above the amount budgeted by the Co. Court?

"The County Court and myself were in your office once in regard to this same matter, however we did not know at that time, that the Circuit Judge would continue to issue Script after the Court Reporters budget was exhausted.

"Thanking you for your cooperation in the past trusting that we may have your opinion in this matter in time for consideration in preparing our budget for this year."

Section 11720 R. S. Missouri, 1929, provides for salary of circuit court reporters, and reads in part as follows:

"Court reporter shall receive salary as follows: In cities, or counties

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which now have and such as may hereafter have a population of sixty thousand or more, an annual salary of three thousand dollars, payable in equal monthly installments out of the city or county treasury on the certificate of the judge of the court in whose division such court reporter is employed. In counties having a population of forty-five thousand and less than sixty thousand inhabitants, an annual salary of two thousand five hundred dollars, payable in equal monthly installments out of the county treasury on the certificate of the judge in whose court he is employed. * * * "

The term "counties" used in connection with the population figures in Section 11720, supra, actually means circuits. See *State ex rel Geaslin v. Walker*, 257 S. W. 470, and *Graves v. Walker*, 23 S. W. (2d) 1107. It is apparent, then, from the above, that the salary of a circuit court reporter, when the circuit is composed of several counties, depends upon the total population of all the counties in the circuit. The problem which now arises is that of the method to be used to determine the population of each county in the circuit for purposes of arriving at a total, in order to apply Section 11720, supra. Section 11808, Laws of Missouri, 1933, page 370, reads as follows:

"The last previous decennial census of the United States shall be the basis for determining the population of any county in this state, for the purpose of ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants."

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In State ex rel Rucker v. Hoffman, 294 Mo. 429, the court held that a circuit court reporter was a "county officer" for purpose of fixing salary. It would seem, then, that we should use the method provided in Section 11808, supra, in order to arrive at the total population of the circuit. According to the 1930 census in the official manual, State of Missouri, 1937-1938, page 220, the populations of the respective counties in your circuit are as follows:

Christian	13,169
Douglas	13,959
Ozark	9,537
Stone	11,614
Taney	<u>8,867</u>
Total	57,146

We see from the above figures that the total population of the counties in the 31st Circuit is more than 45,000 and less than 60,000. By applying the provisions of Section 11720, supra, the circuit court reporter in your circuit is entitled to \$2500.00 a year.

Having disposed of the above preliminary matter, we shall now proceed to render you an opinion on your precise questions as set forth in your request.

Your first question reads as follows:

"Should the Court Reporter present his SCRIPT, issued by the Circuit Judge, to the County Court and in turn get a County Warrant on Class four fund or should the County Treas. honor the Circuit Judges SCRIPT?"

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This office had occasion to rule on that question October 29th, 1935, in response to a request from Hon. Lewis A. Duval, Prosecuting Attorney, Macon, Missouri. We are enclosing a copy of the Duval opinion in answer to your question as to method of payment of the salary of a circuit court reporter.

Your second question reads as follows:

"How are we to keep from paying our Court Reporter in excess to the amount allowed him by the Statutes? Should the Treas. protest or pay warrants above the amount budgeted by the Co. Court?"

In our opinion, the court reporter is receiving a salary in excess of the statutes, and you should refuse to honor the script in excess of the amount deemed to be the legal salary. The burden would then be on the court reporter to establish his claim for the alleged excess by appropriate action.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

RPCW:RW