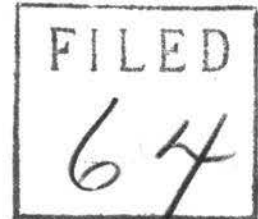


PROSECUTING ATTORNEY: It is not mandatory for county court to pay stated salary of a stenographer for the prosecuting attorney, but should reimburse prosecuting attorney for reasonable sums paid for such services incurred in the discharge of his duties.

December 4, 1942

Hon. Mark Morris
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

This is in reply to your letter of November 25, 1942, which contains a request for an opinion concerning the salary of a stenographer for the prosecuting attorney of a county of eighteen thousand.

This request reads as follows:

"Would appreciate an opinion on the following question: Would a salary of \$75.00 per month for a stenographer for the Prosecuting Attorney in a County of 18000 be mandatory upon the County Court to pay? This work would naturally be for official County and State duties only."

We are enclosing an opinion given by this office on April 24, 1936, to the Honorable Forrest Smith, State Auditor, which held that the prosecuting attorney should be allowed reimbursement for necessary stenographic and clerical help from the county, in reasonable and necessary amounts. This opinion partially covers

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your request. The salary of prosecuting attorneys in certain counties which include Pike County is set out in Section 12939 R. S. Missouri, 1939. We find no statutory authority which allows the prosecuting attorney to employ a stenographer at a stated salary in counties coming under this section. In counties of greater population the legislature saw fit to set out that stenographers could be employed by the prosecuting attorneys at a certain salary, but in the smaller counties the courts have interpreted the law to be that the prosecuting attorney may employ a stenographer and be reimbursed for all reasonable sums paid for necessary stenographic services incurred in the discharge of his official duties.

Since the opinion above described, and a copy of which is enclosed, was given by this department, the Supreme Court of this State has passed definitely upon this question in the case of Rinehart v. Howell County, 153 S. W. (2d) 381. The court, in holding that the prosecuting attorney may be reimbursed for reasonable sums paid for necessary stenographic services, said, at l. c. 382,383:

"This is an action by Homer Rinehart against Howell county, Missouri, for reimbursement of reasonable sums paid for necessary stenographic services incurred in the discharge of his official duties as prosecuting attorney of said county. Howell county appealed from an adverse judgment for \$120." (Under-scoring ours.)

"Appellant points out that, by Secs. 13514, 13467, 12952, and 12979, R. S. 1939, Mo. St. Ann. p. 7056, Sec. 11875,

p. 7042, Sec. 11835, p. 606, Sec. 11326, and p. 613, Sec. 11353, the General Assembly authorized and established salaries for stenographic services to prosecuting attorneys in the larger counties of the State, did not provide for like services in counties of the population of Howell county, and contends for the application of the maxim expressio unius est exclusio alterius. * * * * *

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic services in the discharge of the present-day duties of prosecuting attorneys in the communities affected— an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's

protection of the interests of the state, the county and the public. See the reasoning in Ewing v. Vernon County, 216 Mo. loc. cit. 693, 116 S. W. loc. cit. 522. Consult Harkreader v. Vernon County, 216 Mo. 606, 116 S. W. 523, involving reimbursement to a sheriff of expenditures for water, gas, janitor service and stamps. Buchanan v. Ralls County, 283 Mo. 10,222 S. W. 1002. Additional reasons sustaining the judgment nisi may be found in the cases cited."

Under the above holding the court did not hold that the prosecuting attorney could employ a stenographer at a definite salary and that it would be mandatory upon the county court to pay the salary. It merely held, that the prosecuting attorney should be reimbursed for all reasonable sums paid for necessary stenographic services incurred in the discharge of his official duty. Where a prosecuting attorney employs a stenographer at a definite salary, and pays her, (or him) from his own funds, it would be a question of fact whether the sum paid the stenographer was reasonable and necessary.

Where a prosecuting attorney employs a stenographer and pays the stenographer from his own funds in order that he should be reimbursed it would be necessary that he follow the law as set out in the county budget act, Section 10912 R.S. Missouri, 1939, which reads as follows:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to

the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year and the section or sections of law under which he claims his office is entitled to the amount requested, also he shall submit an itemized statement of the supplies he will require for his office, separating those which are payable under class 4 and class 6. Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary revenue. No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished. The clerk of the county court shall prepare and file an estimate for his office; also for the expense of the judges of the county court. If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4."

Under the above section, it is the duty of the prosecuting attorney who claims any payment for salary, supplies, or any other expenses for personal services,

to submit such claims, for allowances in his budget, to the county clerk on or before the 15th day of January of each year, and, unless he so submits his budget he would not be entitled to allowance for salary, supplies and other expenses. The purpose of submitting the budget to the county clerk is to prevent the county expenditures from exceeding the revenue provided for that year. In passing upon this question the Supreme Court in the case of Traub v. Buchanan County, 108 S. W. 341, said:

"The first contention, that the budget law is invalid, because by it the legislature deprived the county court of its constitutional power to transact the business of the county and vested this power in the auditor, is without merit. The effect and intent of the budget law, as we understand it, is to compel, or at least to make it more expedient for the county courts to comply with the constitutional provision, section 12, art. 10, Mo. Constitution, which provides that a county shall not contract obligations in any one year in excess of the revenue provided for that year. The budget law leaves the transaction of business to the county courts. But the law provides (section 19, p. 350, 1933 Laws (Mo. St. Ann. Sec. 12126s, p.6434)):

" * * * Prior to the enactment of the budget law, a county court had no right to incur obligations in any one year in excess of the revenue provided for that year. By the enactment of the budget law, the Legislature has merely provided ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income. The power of the county

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court not having been curtailed by the enactment of the budget law, the point made by respondent is without merit and is ruled against him."

CONCLUSION

It is, therefore, the opinion of this department that it is not mandatory upon the county court to pay the monthly salary of a stenographer for the prosecuting attorney in a county of eighteen thousand population.

It is further the opinion of this department that the prosecuting attorney should be reimbursed for all reasonable sums paid for necessary stenographic services incurred in the discharge of his official duties as prosecuting attorney of the county.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General of Missouri

WJB:RM