

GENERAL ASSEMBLY: General Assembly may furnish the members
STAMPS: thereof stamps for official business.
EXPENSES:

February 18, 1943

2-24
Hon. Frank P. Briggs
President Pro Tem of the Senate
Senate Chambers
Capitol Building
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not the State Senate may adopt a resolution providing for the furnishing of stamps to its members for official business.

From your telephone conversation in connection with this request, we understand this inquiry goes to the question of the authority of the General Assembly to furnish to its members stamps for use in official business, and whether or not such an act would violate the provisions of Section 16, Article IV of the Constitution of Missouri as amended.

Under Section 1 of Article IV of the Constitution of Missouri the General Assembly is granted all legislative power, subject to the limitations in the Constitution. We also call attention to Section 8, Article XIV of the Constitution of Missouri, which prohibits the increasing of compensation to officers during the term of office.

If this allowance for postage should be considered as compensation, then it might be held to be in violation of said Section 8, supra, as well as in violation of the limit fixed in the late amendment, which reads as follows (Laws of Missouri 1941, page 719, Section 16):

"The members of the General Assembly shall severally receive from the State Treasury for their services a monthly salary of one hundred and twenty five

dollars per month commencing as of January 1st next following the adoption of this Section, and upon certification by the President and Secretary of the Senate, and by the speaker and chief clerk of the House of Representatives, as to the respective members thereof, the State Auditor is hereby directed and empowered to audit and the State Treasurer to pay such compensation without legislative enactment. The members of either house shall also receive the sum of one dollar (\$1.00) for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route."

Said Section 16 before its repeal and re-adoption, contained the following provision with reference to stamps and extra compensation to members of the General Assembly:

"* * * Each member may receive at each regular session an additional sum of thirty dollars, which shall be in full for all stationery used in his official capacity, and all postage, and all other incidental expenses and perquisites; and no allowance or emoluments, for any purpose whatever, shall be made to or received by the members, or any member of either house, or for their use, out of the contingent fund or otherwise, except as herein expressly provided; * * * *"

We must assume that in the preparation of the new amendment the old section was under consideration and especially the portions of that section which would not be included in the new amendment. With that presumption it is quite apparent that the framers of the new amendment only intended to provide for the pay for compensation or salary and mileage to the members.

With that presumption, the expression "expressio unius est exclusio alterius" might be applied here, and, in doing so, it could be argued that since the new amendment only provides for pay for salary and mileage to the members that the framers of that amendment did not intend to fix the amount that the legislature might allow to members for payment of postage, etc., and therefore, left that item to be determined by the General Assembly under its authority as fixed by said Section 1 of Article IV, supra.

In the case of Macon County v. Williams, 224 S. W. 835, 284 Mo. 447, the court distinguished between compensation or salary and expenses, the law providing that the probate judge should receive the same compensation as the circuit judge. The question in that case was whether or not the probate judge could receive as compensation the \$1200 per annum allowed as expenses to the circuit judge. We quote at length from the opinion in this case because we think it is very much in point to the question here. At l. c. 452 (284 Mo.) the court said:

"This question, whether allowances to officers for expenses comes within the meaning of the word compensation, has arisen in several cases. In Wisconsin, under a constitutional provision somewhat analogous to ours, in so far as the question presented was concerned, it was held that a statute providing for a payment to each circuit judge of \$400 per annum 'as and for his necessary expenses while in discharge of his duties,' did not constitute additional 'compensation' in the constitutional sense. (Milwaukee County v. Halsey, 149 Wis. 1. c. 87.) In McCoy v. Handlin, 35 S. D. 1. c. 514 et seq., under a more comprehensive constitutional provision than ours, the Supreme Court of South Dakota held that an allowance of \$600 per annum to the supreme judges 'in consideration of expenses' was not in violation of the prohibition against increasing the compensation of judges. The court held that the salary provided could not be increased, but that the allowances

of expenses, as such, did not have that effect. In considering a similar question with respect to a claim that a Federal judge, who occupied a house belonging to the Government in the Canal Zone, must account for the rent thereof, CLAYTON, J. (Smith v. Jackson, 241 Fed. l. c. 770), quotes from the opinion in the case of McCoy v. Handlin, as follows:

"There it was said: "It is clear that the Legislature did not intend, in the enactment of such legislation, to increase the salaries of the judges, or to grant them any perquisites or emoluments for the discharge of their duties, but only intended to assure them, in so far as possible, that for the performance of their official duties alone, and not for the performance of such duties and the payment of the expenses incident thereto, they should receive the salaries provided by law for the performance of such duties." And again, the court said: "These men (the framers of the Constitution of South Dakota) must have known that Section 1, Article 2, of the Federal Constitution declared that the President should receive for his services a compensation 'which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.' These men must have known that the word 'emolument' was, as recognized by every authority, a term broad and comprehensive, one which includes within it 'perquisites,' 'salary,' 'compensation,' 'pay,' 'wages,' and 'fees.' These men must have known that, with the above provisions of the Federal Constitution in force, the Congress of the United States, a body of men which at all times during the history of this Government has had among its members many of the greatest constitutional lawyers of the day, had enacted

legislation under which the President, for nearly a century prior to the framing of our Constitution, had been furnished a home, horses, carriages, servants, household equipment, and many other things incidental to and appropriate to his high office. These men must have known that such Federal legislation had never been questioned either as regards its propriety or its constitutionality. These men must have known that in practically every State of the Union (in many of which there were constitutional provisions similar to the one above referred to in the Federal Constitution and to the ones relied upon by defendant in this case) there had been legislative enactments making provisions for the several governors similar to those made by the Federal Congress for the President, as well as innumerable measures appropriating money to be paid other officers to recompense them for expenses incurred in the discharge of their official duties. Is it possible for any one to presume that these men, with all these facts in mind, intended, by the words used in our Constitution, to prohibit allowances for expenses incident to the discharge of public duties? Further light has since been thrown upon the construction given to the provision of the Federal Constitution above referred to by the Act of June 23, 1906 (34 Stat. at L. 454, c. 3523; Comp. State. 1913, sec. 225), which provides: 'That hereafter there may be expended for or on account of the traveling expenses of the President of the United States such sums as Congress may from time to time appropriate, not exceeding \$25,000 per annum, such sum when appropriated to be expended in the discretion of the President and accounted for on his certificate solely.' Under appropriations thereafter made by Congress, Presidents Roosevelt and Taft received, and today President Wilson is receiving, thousands of dollars each year. So far as we know, it has never been suggested that the money so allowed was an 'emolument,' and therefore unconstitutional. No one has ever seen fit to accuse these Presidents of

being grafters. The judges of the Federal courts, whose salaries are fixed by a law, declaring that such salaries shall be the 'compensation for their official services,' draw from the United States Treasury a sum not exceeding \$10 per day when absent from the places of their residence. (Act March 3, 1911, c. 231, sec. 259; 36 Stat. at L. 1161; Comp. Stat. 1913, sec. 1236.) This allowance is not given as an increase of salary but to cover the expenses incident to their being away from home in the discharge of their duties." "

From this opinion we conclude that "compensation and salary" are different and distinct from "expenses," when payment to officers are under consideration.

In our research on this question we failed to find any Missouri cases dealing with the question of compensation and expenses to members of the General Assembly, but all of the outstate authorities, in which such question has been considered, support our conclusions here. In the case of Christopherson v. Reeves, 184 N. W. 1015, the Supreme Court of South Dakota had before it a question of whether or not a lump lump sum allowed to legislators for expenses was in violation of a Constitutional provision fixing the pay of legislators. The provisions of the Constitution of that state relating to that subject, (Section 6 of Article 3) read as follows:

"The terms of the office of the members of the Legislature shall be two years; they shall receive for their services the sum of five dollars for each day's attendance during the session of the Legislature, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.

"Each regular session of the Legislature shall not exceed sixty days, except in cases of impeachment, and members of the

Legislature shall receive no other pay or perquisites except per diem and mileage."

At l. c. 1016, the court, in the Reeves case, supra, quoted a rule which we think could be applied here:

"One question will be found running through all the decisions wherein courts have passed upon the validity of statutes providing allowances to public officers, to wit: Was the purpose of the Legislature to increase the salary, or was its purpose merely to save such salary, so that the officer would, in fact, receive the whole thereof, for the performance of his official duties?"

The court in this opinion, also considered some Illinois cases, which were cited by the Attorney-General, and made the following statement at l. c. 1018:

"The Attorney General, in his brief, quotes at length from, and relies upon, the decisions of the Appellate Court of Illinois in the cases of Fergus v. Russell, 270 Ill. 626, 110 N. E. 887 and 270 Ill. 304, 110 N. E. 130, Ann. Cas. 1916B, 1120, where an injunction was sought against the auditor of public accounts to restrain him from issuing warrants for various expenses to the members of the General Assembly. Statutes had been passed appropriating sums for mileage and for telephone services to the members of the Assembly under a Constitution which provided (section 21, art. 4, Constitution of Illinois) that--

"Members of the General Assembly are prohibited from receiving, in addition to such salary as may be fixed by law, "any other allowance or emolument, directly or indirectly, for any purpose whatever, except the sum of

50 per session to each member, which shall be in full for postage, stationery, newspapers and other incidental expenses and perquisites."

"Thus it will be seen that the framers of the Constitution of that state provided for expenses, mentioned them expressly in the Constitution, and used the word as distinguished from the word 'perquisite,' and the interpretation of this Constitution must, of necessity, have precluded any other allowance for mileage or for other expenses. If the word 'expenses' had occurred in our Constitution, we would not hesitate for one moment to declare the law unconstitutional. It is the absence of this word, and the absence of any provision limiting the right of the Legislature, to provide expenses, which makes it difficult for us to see the applicability of this case to the matter at bar."

It will be noted that the court in this opinion particularly referred to the omission of the word "expenses," in the portion of the South Dakota Constitution relating to pay of legislators and, for that reason, it held that the Legislature had authority to pass legislation providing for expenses of its members.

Our Supreme Court, in *Ewing v. Vernon County*, 216 Mo. 681, made a statement which is somewhat applicable here, especially with reference to compelling an officer to pay expenses of his office. In that case the janitor expense was under consideration and the court made this statement, l. c. 689:

"It is believed that the fundamental constitutional maxims to the effect that all government is instituted solely for the good of the whole people, is intended to promote the general welfare, and that private property shall not be taken or

damaged for public use without just compensation, aided by a common sense construction of statutes evidencing a liberal and wise public policy as over against a narrow, cheese-paring one, have caused a public janitor service paid out of the common purse to be so long and universally used in public buildings and all public offices of cities and counties in Missouri, that the precise point has not hitherto come up for decision. * * * * *

The cases which we have cited have considered statutory or Constitutional provisions and not resolutions. We note that you propose to handle this matter by way of resolution. This may be sufficient, however, we call your attention to Section 25 of Article IV of the Constitution, which seems to provide that legislation be enacted by the passage of bills. This might be the safer procedure to take to accomplish your purpose.

CONCLUSION

From the foregoing, it is the opinion of this Department that the General Assembly may provide stamps for official business of its members and such an act would not be in violation of Section 16 of Article IV of the Constitution, as amended Laws of Missouri 1941, page 719.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

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