

COUNTY JUDGE - COMPENSATION: Single county judge who appears, to act as member of court at times provided by law, is entitled to compensation.

March 28, 1944

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Honorable J. F. Newton  
Presiding Judge  
Wright County Court  
Mansfield, Missouri

Dear Mr. Newton:

This is an acknowledgment of your enquiry of March 20, 1944, which is as follows:

"In case where any one of the three judges of the county court is in attendance on any regular or called term of said court, with the other two absent can the one present legally claim attendance and be paid for the day."

Section 2485, R. S. Mo., 1939, is in part as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient:\*\*\*."

Section 2493 thereof is in part as follows:

"A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent,\*\*\*."

Section 2494 thereof is in part as follows:

"\*\*\*In all counties of this state now or hereafter having less than seventy-five thousand inhabitants, the judges of the county court

shall receive for their services the sum of five dollars per day for each day necessarily engaged in holding court. In addition to the salaries herein authorized to be paid to judges of the county court in counties having seventy-five thousand inhabitants or more, and 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 in all counties now or hereafter having a population of twenty thousand inhabitants or less such mileage shall be charged only once for each regular term and such mileage shall not be charged over eight times per year for special or adjourned terms. (R. S. 1929, Section 2092, Re-enacted, Laws 1931, p. 190; Reenacted, Laws 1933, p. 204; Reenacted, Laws 1939, p. 332.)

In the case of Nodaway County v. Kidder, 129 S.W.2d 857, 344 Mo. 795, 801, the Supreme Court held:

"The compensation of a judge of the county court, in a county having less than 75,000 inhabitants is fixed at \$5 per day for each day necessarily engaged in holding court, plus five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court, and such mileage shall be charged only once for each regular term. (Sec. 2092, R. S. 1929 (Mo. Stat. Ann., sec. 2092, p. 2664), as amended Laws of Mo. 1931, pp. 190-191.) In addition a judge of the county court is allowed \$5 per day for each day he sits as a member of the board of equalization and board of appeals. (Sec. 9818, R. S. 1929 (Mo. Stat. Ann., sec. 9818, p. 7915).)

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous,

unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. (State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.)

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. (State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645.)"

Section 2485 supra provides the time for holding court and at such time each judge should be present. Under the provisions of Section 2493 supra, if only one judge were to appear, he would have the power to "adjourn from day to day, and require the attendance of those absent". The performance of such acts would be in a judicial capacity.

Therefore, it is the opinion of this department that when a single member of a county court appears for the purpose of acting in a judicial capacity at such times provided in Section 2485 supra and Section 2487, R. S. Mo., 1939, relating to special terms of the County Court, and Section 2493 supra, he is entitled to the compensation in the manner provided in Section 2494 supra.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED

ROY MCKITTRICK  
Attorney General