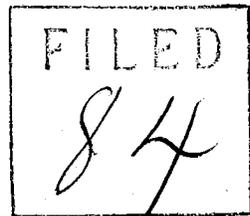


OFFICERS: May recover money expended for necessary extra clerk hire.

October 3, 1945



Honorable George A. Spencer
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, which is as follows:

"Mr. Maurice Dysart, our County Treasurer, has called at my office and discussed the problem of being reimbursed for clerical hire that he has been out to assist him in the office. Two questions are involved, one of which you have perhaps ruled on but I would like to have a specific ruling as to whether or not he is entitled to reimbursement; and the second, how far back could he now go in determining the amount to which he is entitled, if your answer to the first question is that he is entitled to reimbursement.

"To give you all the facts in this particular case, the Treasurer has not budgeted in the past for this item of expense. Would it be necessary to wait and put an item in the budget at the beginning of next year to cover this expense of the past as well as the expense for the year 1946 and if he is entitled to be paid now or budget for it beginning 1946 how far back, in your opinion, would he be entitled to go?"

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It was the settled law of this state for many years that no officer was entitled to compensation from public funds unless he was able to point to a law authorizing the payment. In State ex rel. Buder v. Hackmann, 265 S. W. 532, the Assessor of the City of St. Louis attempted to collect additional compensation for the payment of clerks and deputies which were necessary to the performance of his duties. To support his claim, he relied on Section 13116, R. S. Mo. 1919, which provided in part (referring to the assessor):

" * * * and he and his deputies shall be entitled to receive their actual necessary expenses incurred in the performance of their duties; * * * "

There was no question in the case as to the necessity of the employment of the extra clerks for which compensation was sought, and the Supreme Court, in denying the claim, stated, l. c. 534-535:

"Before the state can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer claiming such fee or expense must be able to point out the law authorizing such payment. Williams v. Chariton County, 85 Mo. 645; State ex rel. Wilder, 197 Mo. loc. cit. 32, 94 S. W. 499; Sanderson v. Pike Co., 195 Mo. loc. cit. 605, 93 S. W. 942. * * *

"The argument of hardship, and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. State ex rel. v. Brown, 146 Mo. loc. cit. 406, 47 S. W. 504. It may be that an assessor actually sustains a financial loss in the performance of his duties under our state Income Tax Law.

But such fact is for consideration by the Legislature and not by the courts. In view of what we regard as the plain provision of the statute that clerk or deputy hire shall be paid by the assessor out of the fees received by him, the cases of *Ewing v. Vernon Co.*, 216 Mo. 681, 116 S.W. 518, and *Harkreader v. Vernon Co.*, 216 Mo. 696, 116 S. W. 523, cited and relied upon by relator, need not be discussed."

However, in the more recent case of *Rinehart v. Howell County*, 153 S. W. (2d) 381, a contrary view was taken. In that case the prosecuting attorney hired a stenographer, at his own expense, and claimed reimbursement from the county on the theory that the stenographic services rendered were necessary in the discharge of his duties. While the court stated that the case was to be distinguished from those in which officials were denied compensation not authorized by law, the distinction appears to be based on the requirement that the officer claiming the compensation must have already paid out money for expense in connection with his duties. In upholding the judgment of the prosecuting attorney against the county for the salary of his stenographer, the court stated, l. c. 382-383:

" * * * The instant case was submitted on the theory, as disclosed by the stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in *Ewing v. Vernon County*, 216 Mo. 681, 695, 116 S. W. 518, 522(b). That case quoted with approval a passage from 23 Am. and Eng. Ency. Law, 2d Ed., 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories and held a recorder entitled to re-

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imbursement for outlays for necessary janitor service and stamps, stating: 'Fees are 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.'"

Following the decision in this case, it would appear that if the expenses incurred by the county treasurer of Boone County in employing extra clerks were necessary to the proper conduct of the office, then said county treasurer is entitled to reimbursement for such expenses by the county.

In considering your second question as to the action that should be taken by the county treasurer with regard to the county budget law, your attention is invited to Section 10912, R. S. Mo. 1939, which reads in part:

"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 * * *."

Under the mandate of this statute, the treasurer should budget for 1946 the expenses which he expects to pay out during that year for necessary expenses of his office for personal service.

With regard to your question as to how far back the claimant may recover for necessary outlays in conducting his office, it is believed that a proper answer is to be found in Gill v. Buchanan County, 142 S. W. (2d) 865. In that case only partial payment had been made of the salary of a county judge for prior years, and it was sought to deny his claim

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for such back salary on the ground that there was not a sufficient amount provided in the county budget for the payment of such claim. In overruling the contention of the defendant county that plaintiff could not recover because he failed to demand payment during the prior years, the court stated, l. c. 669:

"Third: Failure to make a prompt claim cannot mislead a county to its detriment as it might in the case of an individual or private corporation, because a county can only be compelled to make payment out of tax revenue when there is a surplus in any year after all necessary charges have been met, or by a levy when it is not necessary to levy the full amount authorized by constitutional limitations to meet essential expenses, or, if it cannot thus create a surplus or raise funds by levy, to pay otherwise when a bond issue is authorized by the required majority of its citizens, willing to approve it by their votes. * * * In short, even judgments for valid obligations cannot curtail future essential governmental activities."

In view of these cases, it appears that the officer in question could recover necessary expenditures paid out in past years for the period not barred by the statute of limitations. However, we wish to invite attention to a further holding in the Gill case, supra, which has a very direct bearing on the manner in which claims such as those sought in your opinion request may be paid. The court further limited the mode of payment in that case by the following language, l. c. 669:

"Plaintiff, therefore, as the result of the failure to make an earlier claim, has placed himself in a position where, even if he obtains judgment, he can only collect it under one of the above stated situations. * * *"

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CONCLUSION

It is our conclusion that a public officer who has expended money for reasonable and necessary expenses in the conduct of his office may recover for such outlay from public funds for such period as the county court may fail to interpose the statute of limitations as a defense. Any officer seeking to recover such expenses should place the estimated expense of such nature in his budget for each year, but failure to include such item is not a bar to recovery. Payment for claims for prior years must be met from surplus funds after all expenses for the current year have been met, or by bond issue or levy, if constitutional limitations permit, if such a surplus does not exist.

Respectfully submitted,

ROBERT I. HYDER
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APPROVED:

J. E. TAYLOR
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