

CORONERS: In counties of the fourth class are entitled to actual and necessary expenses while carrying out their official duties.

*Copy to
G. Smith*

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Honorable Robert I. Meagher
Prosecuting Attorney
Madison County
FREDERICKTOWN, MISSOURI

Dear Sir:

This will acknowledge receipt of your request for an opinion of this department, which reads as follows:

"Please give me an opinion in regard to the total compensation of a coroner in a county of the fourth class of less than ten thousand population.

"I have read House Bill 881 which sets this compensation at \$5.00 per month. Our coroner in Madison County states that that sum will not pay his actual car expense in the performance of his duties. In your opinion would the coroner in above mentioned counties have to pay his own expenses. It seems somewhat unfair that a public official would be required to perform duties and not be paid sufficient compensation to pay his actual expenses."

Prior to the enactment of House Bill 881 passed by the 63rd General Assembly, coroners in counties having a population of less than 10,000 inhabitants were on a fee basis. Under House Bill 881 the General Assembly changed the method of compensation by placing the coroners on an annual salary. Section 1 of said bill reads as follows:

"The coroner in all counties of the fourth class shall receive for his services annually, payable out of the county treasury in equal monthly installments the

following: In counties with a population of less than 10,000. the sum of \$60.00; in counties with a population of 10,000 and less than 15,000 the sum of \$90.00; and in counties having a population of 15,000 and more the sum of \$120.00."

In your request for an opinion you have specifically inquired whether or not the coroner in counties of the fourth class may be reimbursed for his actual and necessary expenses while carrying out his official duties. We have found no specific statutory authority authorizing the county court to allow actual and necessary expenses incurred by the coroner. However, it is our opinion that a situation of this nature is distinguishable from those cases announcing the rule that officials may not receive any other compensation than that authorized by law. *Maxwell v. Andrew County*, 146 S. W. (2d) 621; *Smith v. Pettis County*, 136 S. W. (2d) 282.

In the case of *Rinehart v. Howell County*, 155 S. W. (2d) 381, the court held that the prosecuting attorney could be reimbursed for reasonable sums paid for necessary stenographic services, in addition to that authorized by law. In arriving at this decision the court stated at 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 reimbursement for outlays for necessary janitor service and stamps, stating: 'fees are the 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." (Emphasis ours.)

You will note in the above quotation that the court placed great emphasis upon the fact that the expenses allowed were "reasonable and actual expenditures for indispensable expenses of the office."

In arriving at this conclusion the court further pointed out that in certain counties the General Assembly has specifically provided that stenographic services should be furnished a prosecuting attorney. We have a analogous situation here in that House Bill 881 of the 63rd General Assembly provides for expenses for coroners in fourth class counties. In discussing a situation of this kind, the court stated at l. c. 333:

"Appellant points out that * * * 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. * * *"

We believe that the Minehart case is authority for the conclusion that if a county court determines that actual and necessary expenses are necessary for the proper conduct of the duties of the office of coroner, then said expenses can be paid for by the county court out of county revenue, and further that if such expenses are indispensable and the county court refuses to provide same and the coroner is compelled to provide it himself, then said coroner can recover from the county his reasonable and actual expenses. It should be noted that what is bona fide, reasonable and actual expenditure is a matter of fact to be determined by the county court. However, if the coroner is of the opinion the county court has acted arbitrarily in its determination, then he may bring suit against the county to recover for his necessary expenditures, but the duty would be upon him in such an action to prove that these expenses are indispensable to the proper conduct of his office.

Conclusion

Therefore, it is the opinion of this department that necessary and actual expenses may be provided by the county court for coroners in counties of the fourth class if the county court finds as a fact said expenses are necessary for the proper conduct and administration of the affairs of said office; and it is further our opinion that if a county court refuses to provide for actual and necessary expenses for the coroner, then, if in fact said expenses are indispensable to the proper conduct and administration of the affairs of his office, he may recover his actual and reasonable expenditures.

Respectfully submitted,

APPROVED:

PERSHING WILSON
Assistant Attorney General

J. B. TAYLOR
Attorney General

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