

CORONERS:
PERPETUATION OF
TESTIMONY:

FILED
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Section 13247, R. S. Mo. 1939, (Sec. 58.54, R. S. Mo. 1949) does not authorize the payment of a stenographer by a county (third or fourth class) to take down the testimony at a coroner's inquest. The coroner shall charge for taking down the testimony at an inquest as provided in said section and pay the money collected for so doing over to the county treasurer but the County court may provide in the County Budget for the expense of necessary stenographic service for and on behalf of the coroner at inquests.

November 28, 1950

11-29-50

Mr. J. W. Thurman
Prosecuting Attorney
Hillsboro, Missouri

Dear Sir:

You have requested an official opinion from this department upon the following problem:

"The Coroner of this county has been paying a stenographer to take down the testimony at inquests in accordance with the provisions of Section 13247 R. S. Mo. 1939. The auditors are here and they have questioned his rights to this charge and as I examine the present law relating to Coroners as repealed and re-enacted, I find under Section 13249.4 Revised Statutes Annotated, that the fees of a Coroner have been changed to a salary, which in our case is a maximum of \$600.00 per year and no provision is made for the charge for taking down and preserving the testimony at an inquest."

Section 13247, R. S. Mo. 1939, provides as follows:

"For taking down the testimony at an inquest, the coroner shall be allowed ten cents for every hundred words, and twenty-five cents for certifying the same."

This section has not been repealed. It will be Section 58.54, R.S. Mo. 1949. This section does not authorize the coroner to pay, at the county's expense, a stenographer to take down the testimony at inquests. It is his authority for charging a fee for taking down the testimony himself.

House Revision Bill 2016, Section 58.10, of the 65th General

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Assembly provides:

"The coroner in counties of the third and fourth classes, shall charge and collect on behalf of the county every fee accruing to his office by law, except such fees as are chargeable to the county, and shall report and pay such fees over to the county treasurer in the manner provided by law."

This section means that the coroner must pay all fees accrued to his office to the county treasurer including compensation charged under and by virtue of the provisions of Section 13247, R. S. Mo. 1939, (Sec. 58.54 R. S. Mo. 1949). We are enclosing a copy of an opinion rendered by this office on March 17, 1950, to Mr. W. V. Mayse, prosecuting attorney of Harrison County, in which the question of the accountability of the fees collected by the coroner is considered.

The coroner shall charge for taking down the testimony as provided in said Section 13247, supra, and the money received for taking down the testimony shall be paid by the coroner over to the county treasurer.

In the case of Bradford v. Phelps County, 210 S.W.2d 996, a similar situation existed, in which the Legislature had made no provision for stenographic hire for prosecuting attorneys in third class counties. The Supreme Court, in an opinion in which all the judges of the court concurred, ruled the County Court could, in the exercise of its discretion, make allowance for the expense of necessitous stenographic service to the prosecuting attorney. In that case the court ruled:

"Of course the Legislature could have provided for salaries for stenographers of prosecuting attorneys in counties of the class including Phelps County, quite as have been provided by statute in counties of other classification. For example, see Laws of Missouri, 1945, pp. 574, 578, and 583, Mo. R.S.A. Secs. 12906 et seq., 12957 et seq., 13547.353 et seq. The Legislature has not done so. This does not mean the County Court of Phelps County should not, in the exercise of its discretion, make allowance for the expense of necessitous stenographic service to the prosecuting attorney. But, in the absence of legislation providing a salary or allowance for a stenographer or for stenographic service for

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the prosecuting attorney of Phelps County, the County Budget Law means the County Court of Phelps County has the power to make whatever allowance for stenographic service as it, in its discretion, may deem necessary with a regard to the efficiency of the prosecuting attorney's office, and to the receipts estimated to be available for that and other estimated expenditures, in short, to approve such an estimate as will promote efficient and economic county government. To put it in another and summary way--since Prosecuting Attorney could not rely on a statute particularly providing pay for his stenographic service, he should have necessarily expected such an allowance as the County Court of Phelps County in the honest, nonarbitrary performances of its duty under the County Budget Law would make. County Budget Law, supra, particularly Sections 10912 and 10917."

Section 13240, R. S. Mo. 1939, provides:

"The evidence of such witnesses shall be taken down in writing and subscribed by them, and if it relate to the trial of any person concerned in the death, then the coroner shall bind such witnesses, by recognizance, in a reasonable sum for their appearance before the court having criminal jurisdiction of the county where the felony appears to have been committed, at the next term thereof, there to give evidence; and he shall return to the same court the inquisition, written evidence and recognizance by him taken."

This statute makes it the duty of the coroner to set down the testimony of witnesses appearing before him at an inquest and to have the witnesses sign the written statement of his testimony. This statute also makes it the duty of the coroner to preserve this evidence so that it may be used in any litigation that may come out of the death that is investigated by the coroner.

It occurs to us that even though no specific statute sets up an allowance for payment for stenographic hire for preserving evidence of witnesses appearing at a coroner's inquest, that the county court may in its discretion, under the ruling of the Bradford case, make whatever allowance for stenographic service it may deem necessary with a regard to the efficiency of the

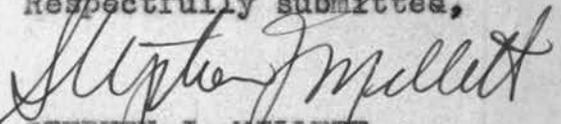
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performance of the duties imposed by statute upon the coroner. The allowance for such stenographic service would be made in the county budget relating to the coroner's office.

CONCLUSION

It is the conclusion of this department that Section 13247, R. S. Mo. 1939, (Sec. 58.54, R. S. Mo. 1949) does not authorize the payment of a stenographer by a county (third or fourth class) to take down the testimony at a coroner's inquest. The coroner shall charge for taking down the testimony at an inquest as provided in said section and pay the money collected for so doing over to the county treasurer. But the County Court may provide in the County Budget for the expense of necessary stenographic service for and on behalf of the coroner at inquests.

Respectfully submitted,


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APPROVED:


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