

CORONERS:

The compensation of coroners in second class counties is confined exclusively to the annual salary of \$2,000.00 fixed by Section 58.090, RSMo 1949.

March 8, 1951

3-14-51

Honorable Ivella McWhorter
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Miss McWhorter:

This will be the opinion you requested from this department in which you ask if a coroner who is a physician and surgeon in a county of the second class may receive any additional fees beyond the \$2,000.00 salary fixed for such officer in Section 58.090, RSMo 1949, (Section 1, Laws of Missouri, 1945, page 1560), (Section 13259, R.S.Mo. 1939, as amended). Your letter is as follows:

"The question has arisen whether or not a coroner who is a physician and surgeon in a county of the second class, should receive any additional fees beyond the \$2000 set by statute under Section 13259.1, R.S. of Missouri, 1939, as amended. The section reads, 'The aforesaid salary shall be paid in lieu of all fees, charges, emoluments, and money due to, or receivable by the coroner, by virtue of any statute, for services rendered.'

"It will be noted that under Section 13257, R.S. of Missouri, 1939, that a coroner, if he is himself a physician and surgeon, and as coroner conducts a post mortem examination, that he shall be granted an additional fee, not exceeding \$25.00. This section was not repealed and there is now some controversy whether or not the coroner here in Greene County can receive an additional \$25.00 for each post mortem examination under Section 13257, supra, when section 13259.1 reads as it does as to fees, charges, emoluments, and money due to, or receivable by the coroner, by virtue of any statute, for services rendered.

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"And further, would the other statutes relating to fees payable to coroners and not designating the class of county apply to a coroner of a county of the second class, so that there would be other additional fees which could be payable to such coroner."

Your letter submits specially:

1) If the coroner conducts a post mortem examination is he entitled to an additional fee of \$25.00 for each post mortem examination under Section 13257, R.S. Mo. 1939, now Section 58.530, RSMo 1949, and

2) Would other statutes relating to fees payable to coroners and not designating the class of county, apply to a coroner of a county of the second class so that other additional fees may be payable to such coroner.

The third paragraph of Section 48.020, RSMo 1949, defining counties of the second class, reads as follows:

"Class 2. All counties now having or which may hereafter have an assessed valuation of fifty million dollars and less than three hundred million dollars shall be in the second class."

The official manual of the State of Missouri, popularly known as the "Blue Book", page 747, states that Greene County, Missouri, at the time of the compilation and publication of said manual had an assessed valuation of property at \$69,065,928 and a population of 90,541, such county would, therefore, by reason of the assessed valuation thereof be established by the terms of paragraph 3 of Section 48.020, supra, as a second class county.

Section 58.090, RSMo 1949, (Section 1, page 1560, Laws of Missouri, 1945), (Section 13259.1, R.S. Mo. 1939, as amended), reads as follows:

"In all counties of the second class, the coroner shall receive an annual salary of two thousand dollars for his services, to be paid by the county, in twelve equal monthly installments, by warrants drawn on the county treasury. The aforesaid salary shall be paid in lieu of all fees, charges, emoluments, and money due to, or receivable by the coroner, by virtue of any statute, for services rendered."

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Section 58.520, RSMo 1949 (Section 13424, R.S. Mo. 1939) reads as follows:

"Coroners shall be allowed fees for their services as follows; provided that when persons come to their death at the same time or by the same casualty, fees shall only be paid as for one examination:

For the view of a dead body	\$5.00
For issuing a warrant summoning each jury of inquest75
For swearing each jury50
For each subpoena for witnesses (all names to be put in one subpoena if possible).....	.25
For taking each recognizance (all names to be put in one recognizance).....	.75
For going from his residence to the place of viewing a dead body and return, each mile08

The above fees, together with the fees allowed jurors, constables and witnesses, in all inquests, shall be paid out of the county treasury as other demands. For performing the duties of sheriff, the coroners shall be entitled to the same fees as are for the time being allowed to sheriffs for the same services."

Section 58.540, RSMo 1949 (Section 13247, R.S. Mo. 1939) reads 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."

Section 58.470, RSMo. 1949 (Section 13258, R.S. Mo. 1939) reads as follows:

"Whenever an inquest shall be held, and the coroner shall have good reason to believe that the deceased came to his death by poison administered by the hand of some

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person other than the deceased, he may, at the request of the jury, cause chemical analysis and microscopical examination of the body of the deceased, or any part of it, to be made; and the testimony of medical and chemical experts may be introduced for the purpose of showing how and in what manner the deceased came to his death; and the coroner shall certify to the county court of his county the fact of such analysis or examination, and testimony of such medical or chemical experts, and that the same was, in his opinion, necessary to an examination into the cause of the death of the deceased; and the court shall allow such fees or compensation for such analysis, examination or medical or chemical testimony of experts as shall be deemed by said court to be just and reasonable."

Section 58.530, RSMo 1949, (Section 13257, R.S. Mo. 1939) reads as follows:

"Whenever the coroner, being himself a physician or surgeon, shall conduct a post-mortem examination of the dead body of a person who came to his death by violence or casualty, and it shall appear to the county court that such examination was necessary to ascertain the cause of such person's death, the county court may allow the coroner therefor an additional fee, not exceeding twenty-five dollars, to be paid as his other fees in views and inquests; but section 58.560 shall not be construed to apply to any such examination when made by the coroner himself."

Section 58.460, RSMo 1949 (Section 13245, R.S. Mo. 1939) reads as follows:

"Whenever an inquest shall be held, if there be no relative or friend of the

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deceased, nor any person willing to bury the body, nor any person whose duty it is to attend to such burial, the coroner shall procure a cheap, plain coffin, and cause a grave to be dug and the body to be conveyed thereto and buried. It shall be the duty of the coroner, in so doing, to avoid all unnecessary expense, and to render to the court an accurate statement of all money expended by him for such purpose; and the county court shall make to him a reasonable allowance for his actual expenses in procuring the coffin, hauling the body to the grave, digging the grave, and burying the body; and also a reasonable allowance, according to the circumstances, for his own time and services in attending to such preparations and burial."

The sections hereinabove quoted constitute the entire number of sections of our statutes referring to compensation to be paid coroners for their official services.

Section 58.090, supra, is a special statute fixing the salary of coroners in class two counties as a special class of counties.

Said Section 58.090 was a new statute (H.B. 896, Laws of Missouri, 1945, page 1560) enacted by the 63rd General Assembly of this State fixing the salaries of coroners in second class counties after the enactment of the Act classifying counties of this State according to their assessed valuation of property. (Laws of Missouri, 1945, page 1801). It would be difficult, as we view it, to construct language of plainer or clearer meaning than this section provides in saying that "the aforesaid salary shall be paid in lieu of all fees, charges, emoluments and money due to or receivable by the coroner by virtue of any statute, for services rendered."

Sections 58.520, 58.530, 58.540 and 58.460, supra, are other sections which provide in some amounts fees as compensation to be paid to coroners for various services.

Section 58.470, supra, it appears, does not provide that the fees therein mentioned shall be paid to the coroner,

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but provides for the payment of such examination fees or compensation to persons who give testimony as medical and chemical experts from analysis and microscopic examination made of the body, or any part of it, of a person reasonably believed by the coroner to have come to his death by poison administered by the hand of some person other than the deceased. But it might be, if the coroner is a physician himself, that it would be possible for him to make the analysis or examination required, and claim such fees. It is for this reason that we quote and consider the section, lest it be said that, because we did not do so in preparing this opinion, such coroner might be considered as being entitled to fees thereunder as an exception to Section 58.090. We do believe that none of such fees provided for in this section may be claimed by or paid to the coroner.

These sections other than said Section 58.470 relating to fees and compensation to coroners are in direct and irreconcilable conflict with said Section 58.090. Said Section 58.470, would also be in such conflict with Section 58.090, if Section 58.470 should be construed to provide fees for the coroner, or if, thereunder, he should for any reason, claim any part or all of the fees therein mentioned.

Said Section 58.090 does not in express terms repeal said Sections 58.520, 58.530, 58.540, 58.460, all of which sections do provide for fees and compensation to be paid to coroners. But said Section 58.090 provides that the salary of \$2,000.00 to be paid coroners of second class counties "shall be paid in lieu of all fees, charges, emoluments, and money due to, or receivable by the coroner, by virtue of any statutes, for services rendered." (Underscoring ours.) However, since there is an irreconcilable conflict between such other sections and Section 58.090, Section 58.090 does, by implication, as to coroners in class two counties, repeal each and all of said other numbered sections, except said Section 58.470, which section, for the reasons given in the discussion hereinabove of Section 58.470, we believe, does not provide fees for the coroner himself.

There are two ways, it is said, of repealing a statute, one by express terms in a repealing clause of a statute, the other by implication, because of repugnancy between the terms of the new and repealing statute and the terms of a former and repealed statute. Our Supreme Court in the case of City of St. Louis vs. Kellman, 235 Mo. 687, l.c. 694, expressing this rule said:

"* * * There are two ways of repealing an ordinance or statute--one total, where the repeal is by express terms the other (complete) arises by necessary implication where total repugnancy exists between a later and an elder

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ordinance or law; * * * ."

Section 58.090, fixing the salary of coroners in second class counties at \$2,000.00, in lieu of all fees due or receivable by virtue of any statute for their services and the provisions of the group of other numbered statutes granting coroners, generally, other fees and emoluments, cannot stand together. Either the one or the other statutes constituting the group must fall. Section 58.090 was enacted, as will be observed, (Section 1, Laws of Missouri, 1945, page 1560) long after, in period of time, the enactment of each of said conflicting statutes. The repeal by Section 58.090, by reason of its later enactment of such statutes so in conflict therewith and repugnant thereto by implication, as to compensation of coroners in class two counties, is apparent. In the case of State ex rel. vs. Shields, 230 Mo. 91, applying this rule, l.c. 100, our Supreme Court said:

"It is settled doctrine that a subsequent statute necessarily repeals a prior one when there is between them a conflict and repugnancy so clear that the two cannot stand together. * * * ."

Aside from the question of repeal, Section 58.090 deals with the compensation of coroners in a special class of counties--counties of the second class--and in that regard is a special statute, in contradistinction to the general statutes constituting said group of statutes providing other fees for coroners, in conflict with the terms thereof, passed long before the enactment of Section 58.090 and the later statute must prevail over them. In the case of State ex rel. Bates Co. vs. Lee, 303 Mo. 641, the Court was considering two statutes said to be in conflict, one a special statute, the other a general statute. That the special statute must prevail was held by the Court, l.c. 622, the Court saying:

"* * * And if a special provision applicable to a particular object be inconsistent with even a later general law, the special provision will prevail. * * * ."

The Section, 58.090, states that the salary fixed for coroners in second class counties shall be paid "in lieu of" all fees, charges, emoluments and money due to or receivable

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by the coroner. The phrase "in lieu of" means instead of or in place of. Our Supreme Court construed the phrase "in lieu of all other compensation" in the case of Reay vs. Coal Co., 34 S.W. (2d) 1015. The phrase was used in Section 17(a) of the Workmen's Compensation Act, Laws of Missouri, 1927, page 499, where a part of said Section 17(a) provided as follows:

"For permanent partial disability, in lieu of all other compensation, except that provided under section 13 of this act, the employer shall pay to the employee, $66 \frac{2}{3}$ per cent of his average earnings as computed in accordance with section 22, but not less than six dollars nor more than twenty dollars per week, for the periods hereinafter provided."

The Court held that the phrase in the Compensation Act meant precisely what it said, and that it did not permit any other compensation to be paid under Sections 15 or 17(a) of the Act. The Court in construing the phrase, and holding it, as used in said Section 17(a), to exclude payment of all other compensation, l.c. 1016, 1017, said:

"* * * We think there is no doubt but that the language in the 'in lieu' clause appearing in section 17(a) is clear, plain, distinct and unambiguous. When the Legislature plainly and distinctly declares its intention the act is not open to construction and excludes interpretation. * * * ."

The Legislature in the enactment of said Section 58.090 provided not only that the salary of coroners in class two counties should be in lieu of all fees, charges, emoluments, and money due to or receivable by coroners of such counties, but made the exclusion of the receipt of compensation other than the salary fixed by said section as completely clear and emphatic as it would be possible to make language express their intention by further providing that the salary for their services is to be in lieu of such fees, etc. "by virtue of any statute".

The phrase "by virtue of" was construed by our Supreme

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Court as to its meaning and effect in the case of State ex rel. vs. Gass, et al., 296 S.W. 431. The Court in giving its construction of the phrase, l.c. 432, said:

"It is argued that 'the service of a judge as a jury commissioner is not a duty by virtue of the office of circuit judge.' The words 'by virtue,' as used, mean 'because of; through; in pursuance of.' Stroud's Judicial Dictionary; New Standard Dictionary; Webster's New International Dictionary. * * * ."

Confining the right to compensation and the means whereby it is paid to a public officer to statutory authority therein, our Supreme Court in the case of State ex rel. vs. Gordon, 245 Mo. 12, l.c. 28, said the following:

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and text-writers, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further, it seems well settled that 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 the same. * * * ."

The case of State ex rel. McGrath vs. Holladay, State Auditor, 67 Mo. 64, was before our Supreme Court on the construction of a constitutional provision which provided that members of the State Board of Equalization should be paid by salaries for the services of such officers in place of fees. The members of the Board were the State Executive Officers. The application of the provision of the Constitution fixing salaries instead of fees for their services prescribed by law

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that the coroner in second class counties in this State may not receive any other compensation of any character or under any statute whatsoever except the annual salary of \$2,000.00 provided in said section for his services, and that all other statutes providing other compensation for coroners are, as to coroners in second class counties, impliedly repealed by said Section 58.090, because in irreconcilable conflict therewith.

CONCLUSION.

It is, therefore, the opinion of this department considering the above cited and quoted authorities that:

1) In second class counties in this State the total compensation of coroners for their entire services is fixed at an annual salary of \$2,000.00, and the same is to be in lieu of all fees, charges, emoluments and money due to, or receivable by such coroners in such counties by virtue of any statute for their services rendered;

2) That all other statutes providing other compensation for coroners are, as to coroners in second class counties, impliedly repealed by said Section 58.090, RSMo 1949, because in irreconcilable conflict therewith.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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