

COUNTY COURTS:  
MILEAGE:

County Court Judges in counties of the third class shall receive 5¢ per mile for each mile necessarily traveled in going to and returning from the place of holding county court, and no other mileage.

May 8, 1951

5-8-51

Honorable B. C. Tomlinson  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your opinion request:

"I would like an official opinion from your office with reference to the following state of facts:

"In a county of the third class it often becomes necessary for a Judge of the County Court to make trips in and about the county and to other places in order to perform his official duties. Section 49.100 R. S. Mo. 1949 provides travel expenses for county judges in counties of class two. In Rinehart v. Howell County, 153 S.W. (2d) 381 it was pointed out that the General Assembly authorized and established salaries for stenographic services to prosecuting attorneys in the larger counties of the State but did not provide for like services in counties the size of Howell County and yet the Supreme Court held that a prosecuting attorney in any size county was entitled to reimbursement by the county for reasonable sums paid for necessary stenographic services. In Ewing v. Vernon County, 216 Mo. 681 it is stated at page 695: 'Where the law requires an officer to do what necessitates an expenditure of money, for which no provision is made, he may pay therefor and have the amount allowed him.' Would not the same reasoning apply to a county judge who is required to

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make trips in his automobile that are necessary and essential in order for him to perform his official duties?"

Section 49.110, RSMo 1949, including caption, states:

"Per diem, mileage, and fees of judges in counties of class three-effective date.- In all counties of the third class in this state, the judges of the county court shall receive for their services the sum of ten dollars per day for each of the first five days in any month that they are necessarily engaged in holding court and shall receive five dollars per day for each additional day in any month that they may be necessarily engaged in holding court, and shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court. The per diem compensation herein fixed shall be paid at the end of each month and the mileage compensation shall be paid at the end of each month on presentation of a bill, by each of the respective county judges setting forth the number of miles necessarily traveled; provided, however, that this increase in compensation shall not become effective during any county judge's present term of office."

You will note that the above section, in respect to the mileage which county court judges in counties of the third class shall receive, states: "and shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court."

The above is the only Missouri statute pertaining to the matter of mileage for county court judges in counties of the third class.

It will be observed that Section 49.100, RSMo 1949, which relates to county court judges in class two counties, allows five cents per mile for travel in performance of duty, while Section 49.120, RSMo 1949, which relates to class four counties, allows county court judges only mileage for going to and returning from court once for each regular term, and not

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over eight times per year for special and adjourned terms. From the above, it would appear to have been the intention of the Legislature to reduce this item of mileage progressively from class two counties down through class four counties.

It is well established in this state that statutes providing for compensation in a particular mode or manner must be strictly construed against the public officer and that a public officer claiming compensation for official duties must point out the particular statute authorizing such payment.

In the 1939 case of *Nodaway County v. Kidder*, 129 S.W. 2d 857, 1.c.860, the Court stated:

"(5-7) 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.

"(8) 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."

In your letter you refer to the 1908 case of *Ewing v. Vernon Co.*, 216 Mo. 681, and to that portion of the opinion in that case which states, 1.c. 695:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388.

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'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

We are inclined to believe that the above case would be too remote in application to be controlling in the instant case in any event, and in view of the Nodaway County case referred to above, we believe that it very clearly would not be applicable in the instant case where a specific statute (Section 49.110, RSMo 1949) was plainly meant to apply to the situation involved. The statute referred to above, we believe, is clearly one of limitation as well as of allowance. For the same reason that we believe the Ewing case to be inapplicable, do we believe that the Rinehart case, also mentioned by you, does not apply in the instant case.

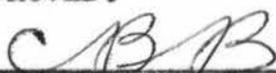
CONCLUSION

It is the opinion of this department that county court judges in counties of the third class shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court, and no other mileage.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
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