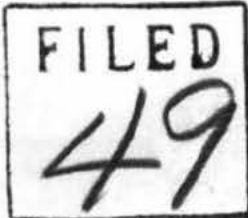


COUNTY TREASURER:

County treasurers of third class countie not entitled to reimbursement for clerical hire which is not indispensably necessary to the successful and efficient conduct of the office.



September 10, 1952

9-18-52

Honorable Robert G. Kirkland
Prosecuting Attorney of
Clay County
Liberty, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department which request reads as follows:

"The Treasurer of this county has requested this office to obtain from you your official opinion on the proposition set out in the following excerpt in her letter to me.

"I have in my possession, the opinion of the Attorney General of Missouri dated December 10, 1947, addressed to L. M. Bywaters, then Prosecuting Attorney, to which there are attached three separate former opinions of the Attorney General.

"It is my opinion I am entitled to reimbursement from the county necessary additional services rendered to my office which are reasonably beyond my ability to furnish, however, the opinion does not cover the situation when I was incapacitated by illness and unable to be at the office and out of my office for nine months, and found it necessary to hire someone to operate the office for which they were paid by me. I would like to know if I am entitled to reimbursement for this money which I paid out."

Honorable Robert G. Kirkland

"Your opinion on this proposition would be appreciated as soon as convenient."

The precise question taken from your opinion request is whether or not a county treasurer of a county of the third class may be reimbursed by the county for moneys expended for clerical hire during a period when the treasurer was incapacitated due to illness and unable to attend the office.

A search of the statutes relative to the treasurer of such counties reveals no provision authorizing the appointment of deputies or clerical hire or the payment thereof by the county. In such case the general rule is that the deputies and assistants must look to the officer for their compensation. This rule is stated in the case of *Alexander v. Stoddard County*, 210 S.W. (2d) 107 as follows:

"* * * As a general rule compensation for services rendered by assistants, deputies, and other employees can be allowed directly to them or to their superiors only as authorized by law; and where no provision is made for the payment, or for the appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement. * * *"

There are certain noted exceptions to this general rule indicated by the case of *Ewing v. Vernon County*, 216 Mo. 681, and *Rinehart v. Howell County*, 348 Mo. 421, however, we do not believe that such decisions are controlling on the question at hand. These cases are based upon a construction of a particular statute and hold that by reasonable implication they permit the payment of some particular item of expense. In the *Rinehart* case the prosecuting attorney was allowed reimbursement for stenographic hire on the ground that it was an indispensable expense necessary to the successful and efficient conduct of his office. Of particular importance in the latter case, as distinguished from this case, is the fact that the prosecuting attorney was present and performed his duties insofar as possible and the stenographic hire was an additional expense.

From the facts that you have submitted it does not appear that the treasurer could not have performed the duties of the office had she been present and we presume that she continued to draw the compensation provided by law.

Honorable Robert G. Kirkland

The legislature has prescribed the duties of the county treasurer and provided a compensation which is presumably adequate for the duties performed. The fact that a duly elected treasurer, whether by choice or through necessity, does not attend the duties of the office but employs someone to discharge those duties in his stead, does not thereby create new duties which are not covered by the compensation provided by law for the office. In other words, such an outlay is not an indispensable expense necessary to the successful and efficient conduct of the office which has not already been provided for. Therefore, we believe that the general rule adopted by the Supreme Court in the Alexander case, supra, is here controlling and the treasurer cannot look to the county for reimbursement.


CONCLUSION

Therefore, it is the opinion of this department that a county treasurer of a county of the third class is not entitled to reimbursement for clerical hire during a period when such treasurer is incapacitated due to illness and unable to attend the duties of the office.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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