

COUNTIES: County clerk not entitled to additional
COUNTY COURT:
COUNTY CLERK: compensation for preparing payroll for
COMPENSATION:
FEES AND SALARIES: county highway department employees.



May 1, 1953

Honorable Rex A. Henson
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"I have been requested by the Presiding Judge of the County Court of this County to procure your opinion of a problem now facing the Court.

"This county is a third class county and for several years now the County Court has operated without a County Highway Engineer. During the time since the county has been without a Highway Engineer we have had one County Clerk in office, and he has charged the county a monthly salary, in addition to the compensation provided by statute, for preparing the payroll for the County Highway Department employees. This payroll was formerly prepared by the County Highway Engineer. The County Clerk's compensation for this job has varied from \$50.00 to \$75.00 per month during the last three or four years, and only recently the Presiding Judge of the County Court learned indirectly that the State Auditor had advised the County Clerk that he would have to refund all the money he had drawn

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from the County Treasury since he started preparing the Highway Department payroll.

"I would appreciate your written opinion as to whether or not the County Court is authorized to pay the Clerk additional compensation for this work, and if they are not authorized to do so, if it is the duty of the County Clerk to prepare the County Highway Department payroll without additional compensation."

Subsection (2), Section 51.150, RSMo 1949, provides as follows:

"It shall be the duty of the clerk of the county court:

* * * *

"(2) To keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom;"

It is our view that under the provisions of this statute it is the duty of the county clerk to prepare the county highway department payroll. It is axiomatic that a public officer is entitled only to such compensation as is provided by statute for the performance of his official duties.

In the case of Nodaway County v. Kidder, 344 Mo. 795, l.c. 801, the Supreme Court said:

"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

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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.)

"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.)"

CONCLUSION

It is the opinion of this department that a county clerk of a county of the third class is not entitled to additional compensation for preparing the payroll for employees of the county highway department, and the county court has no authority to pay him additional compensation for such work.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. C. B. Burns, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

CBB:lrt