

PROBATE COURT:

Duty of county to furnish certain legal publications for the office of probate judge.



March 11, 1953

Honorable E. C. Westhouse  
Probate Judge and Ex-Officio Magistrate  
Madison County  
Fredericktown, Missouri

Dear Sir:

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

"Could you give me an opinion on whether the complete sets or the part that applies to Probate and Magistrate Courts of Vernon's Annotated Missouri Statutes and Missouri Digest would be classified under other necessities as per Missouri Statute, 1949, section 481.060? Also, would Limbaugh's Missouri Practice with Forms, which concerns Justice of the Peace (Magistrate) and Probate, be considered as necessities?"

"Concerning the above, what effect if any would the action of the County Court have if they arbitrarily disallowed these items and furniture from the budget without first granting the officer a hearing? Mo. Stat. 1949, Sec. 50.740.

"Any information that you can give me in this regard will be greatly appreciated."

Section 481.060, RSMo 1949, to which you refer provides as follows:

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"Every probate court shall have a seal of office, of some suitable device, the expense of which, and the necessary expense incurred by said court for books, stationery, furniture, fuel and other necessaries, shall be paid by the county."

At the outset we wish to state that the appellate courts of this state, in regard to furnishing offices, janitor service, stationery, postage and equipment for the offices, have adopted a liberal policy. County of Boone v. Todd, 3 Mo. 140; St. Louis County v. Ruland, 5 Mo. 268; Saylor v. Nodaway County, 159 Mo. 520; Ewing v. Vernon County, 216 Mo. 681 and 696; Buchanan County v. Ralls County, 283 Mo. 10.

In the above noted cases the statutes under consideration were not explicit on what should be furnished each county official, yet the courts have adopted a liberal view in the interests of efficiency of the office and its officers in the performance of their duties.

Section 481.060, supra, and particularly in regard to the term "other necessaries" has received construction by the Supreme Court of Missouri on several occasions. In the case of Saylor v. Nodaway County, 159 Mo. 520, the Supreme Court held that a probate judge under this section was entitled to postage stamps used in his office and in the opinion the court said:

"By the same rule of interpretation the judgment of the circuit court herein must be reversed, for in this case it was agreed at the trial, that the stamps, for which the probate judge presented his bill to the county court for allowance, were used in the discharge of the official business of his office and that they were necessarily required in the performance of his official duty. While everything that an official may use to facilitate him in the accomplishment of the work he is directed by law to perform, may not be asked to fall within the meaning of the term 'all other necessaries,' as used in section 1726, supra, certainly everything that he is directed to use, or that must necessarily be used in the performance of a designated act or acts required to be performed by him, should be held to be included within the meaning of that term, unless something previously or subsequently used in the section or act so providing, should clearly indicate a contrary intention."

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In the case of *Motley v. Pike County*, 233 Mo. 42, the court held that a probate judge was entitled to janitor service and an office phone and in its opinion said:

"Nor do we think there was error in the allowance for telephone service. The term 'other necessities' as used in the statute is sufficiently broad to cover this item. We are not living in the 'dark ages,' but in a day of progressiveness and enlightenment. Modern business is transacted by modern means and methods. In this day of the world the use of the telephone is in many instances as much of a necessity in the transaction of both public and private business as is the postal service. The use of the telephone has passed the period of mere convenience. It has reached the period of necessity. We are of the opinion that the plaintiff with the power to furnish his office with 'other necessities' had the right to engage telephone service to facilitate the business of his office with the general public. The testimony is that it was necessary, but even without testimony we would have to know what the general public knows with reference to a matter of this kind."

You will note that the court, in the *Pike County* case, indicated that a telephone might not have been a necessity at one time but that under the modern methods of transacting business it has passed the period of mere convenience. The same reasons, we believe, would apply to the instant case. Legal publications comprise an attorney's "tools of trade." With an ever increasing number of cases reaching the appellate courts involving the construction, interpretation and application of existing statutes and constant new legislation stimulated by a more complex society, it becomes incumbent upon an attorney to rely upon certain legal publications if he is to adequately and efficiently perform the duties enjoined upon him. Such publications, or access thereto, we believe are as necessary to the operation of the office of probate judge as fuel, furniture, janitor service, postage stamps or a telephone. That part of *Vernon's Annotated Statutes* that applies to the probate and magistrate court and form books, such as the one you have mentioned, would fall within such category.

You next inquire what effect the action of the county court would have if they arbitrarily disallowed these items from the budget without

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first granting the officer a hearing. Section 50.740 provides that it is the duty of the county court at its regular February Term to go over the estimates and revise and amend the same in such a way as to promote efficiency and economy in county government. Said section further provides that the court shall give the person preparing supporting data an opportunity to be heard. Assuming that this section makes it mandatory to grant a hearing, we note that probably the county court has already met at its February Term and therefore, this question would be moot.

We believe that if the county court acted arbitrarily, capriciously or otherwise, in abuse of its discretion in disallowing said items, such action could be reviewed by an appeal to the circuit court, such an action is indicated in the case of Bradford v. Phelps County, 210 S.W. (2d) 996, wherein the court, in its opinion said:

"It is seen in the Daues case, supra, the county court's exercise of a discretionary duty delegated by the Legislature could have been examined by the circuit court in an action of an equitable nature when it was alleged the county court had acted arbitrarily, corruptly and fraudulently, and not in the exercise of an honest discretion.

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"We have noticed the Legislature has seen fit to delegate to the county court discretionary powers and duties under Section 10917 of the County Budget Law--the county court can be said to be 'the agency most familiar with the fiscal affairs and financial condition of the county' (State ex rel. Dietrich v. Daues, supra; State ex rel. Dwyer v. Nolte, supra), as well as the agency most likely to soundly budget estimated receipts and expenditures to the end of efficiency and economy in county government. It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or, if such were the charge, acted fraudulently or corruptly)."

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CONCLUSION

Therefore, it is the opinion of this office that certain legal publications or access thereto, are "necessaries" for the proper and efficient operation of the office of probate judge.

We are further of the opinion that if the county court acting within its discretion, arbitrarily, capriciously or fraudulently disallows such items, such action may be reviewed in an appeal to the circuit court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON  
Attorney General

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