

TREASURER: The county court may pay compensation to or  
COUNTY TREASURER: reimburse the county treasurer for compensa-  
COUNTY OFFICERS: tion paid to a clerk in the Treasurer's office  
COUNTY COURT: where it appears that such expenditures are  
indispensably necessary to the conduct of the  
office, if the County Budget Law is complied  
with.

September 21, 1955

Honorable Harold W. Barrick  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

You have recently asked this office for an opinion concerning the following matter:

"Is it legal for the County Court of a Third Class County to either pay the salary of a clerk in the County Treasurer's office or reimburse the County Treasurer for the clerk's salary when the Treasurer pays the same?"

It appears that Pettis County is not organized under township organization and, therefore, such cases as Alexander v. Stoddard County, (Mo.Sup.), 210 SW2d 107, which are based upon specific statutes applying only to counties under township organization have no application to your problem.

It appears from the case of Buchanan v. Ralls County, 283 Mo. 10, 222 SW 1002, that the county treasurer is entitled to be supplied at county expense with an office, heat, light, janitor service and other necessities to the conduct of his county office, and that if the county refuses to provide such services, he may recover from the county his reasonable expenditures therefor.

As is pointed out in Ewing v. Vernon County, 216 Mo. 681, 116 SW 578, such matters of expenditure to obtain supplies or services necessary to the conduct of the office are to be contrasted to and differentiated from additional compensation to the officer himself, and that the officer is entitled to have such necessary supplies and services supplied to him by the county, and if the county unreasonably refuses to supply the same, he may make the necessary expenditures therefor and recover the same from the county. Thus the Missouri Supreme Court, in considering this matter in the above quoted case, said, l.c. 216 Mo. 695:

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

In this connection, see also Harkreader v. Vernon County, 216 Mo. 696, 116 SW 523.

While the foregoing cases refer primarily to supplies and kindred matters, the case of Rinehart v. Howell County, 153 SW2d 381, 348 Mo. 421, dealt especially with personal services. Here the prosecuting attorney of Howell County had employed a stenographer and paid her compensation out of his own funds. He then brought suit to recover such amount from the county. The court, in allowing recovery, pointed out that it was uncontroverted in the case that the services of such stenographer were indispensable outlays in the discharge of the official duties of the prosecutor. The court again emphasized the difference between such outlays and additional compensation to the officer. The court, in reaching the conclusion allowing recovery, said, l.c. 153 SW2d 383:

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic services in the discharge of the present-day duties of prosecuting attorneys in the communities affected--an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if

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indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's protection of the interests of the state, the county and the public. \* \* \*

The court was careful to point out that any defense the county might have under the County Budget Law had not been properly raised and was not a live issue in the case.

In a similar case, that of Bradford v. Phelps County, 210 SW2d 996, 357 Mo. 830, the court again had under consideration the matter of compensation of a stenographer employed by the prosecuting attorney. In this case the budget law had been complied with. The prosecuting attorney submitted an estimate of seventy-five dollars per month as compensation for his stenographer. The county court, in its budget as finally passed, allowed only fifty dollars per month for such services. The prosecuting attorney proceeded to pay the seventy-five dollar amount, and brought suit for the difference. The court pointed out that such services were proper inasmuch as the hiring of stenographers and the payment of their compensation was authorized in counties of larger population, and held that since there was no specific statutory authorization for the hiring of a stenographer by the prosecuting attorney and her compensation by the county that such matter was, under the County Budget Law, left to the discretion of the county court, and that their action on such matter would be upheld as long as such action was in the pursuance of their honest, nonarbitrary performance of duty. In reaching this conclusion, the court said, l.c. 210 SW2d 1000:

"Of course, the Legislature could have provided for salaries for stenographers of prosecuting attorneys in counties of the class including Phelps County, quite as have been provided by statute in counties of other classification. For example, see Laws of Missouri, 1945, pp. 574, 578, and 583, Mo.R.S.A. Secs. 12906 et seq., 12957 et seq., 13547.353 et seq. The Legislature has not done so. This does not mean the County Court of Phelps County should not, in the exercise of its discretion, make allowance for the expense of necessitous stenographic service to the prosecuting

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attorney. But, in the absence of legislation providing a salary or allowance for a stenographer or for stenographic service for the prosecuting attorney of Phelps County, the County Budget Law means the County Court of Phelps County has the power to make whatever allowance for stenographic service as it, in its discretion, may deem necessary with a regard to the efficiency of the prosecuting attorney's office, and to the receipts estimated to be available for that and other estimated expenditures, in short, to approve such an estimate as will promote efficient and economic county government. To put it in another and summary way--since Prosecuting Attorney could not rely on a statute particularly providing pay for his stenographic service, he should have necessarily expected such an allowance as the County Court of Phelps County in the honest, nonarbitrary performance of its duty under the County Budget Law would make. \* \* \*

In a later case involving a similar situation, the prosecuting attorney requested the county court to include within its budget compensation for his stenographer. The county court, after considering the matter, refused to include within its budget any amount for compensation of the stenographer to the prosecuting attorney. The prosecuting attorney then paid his stenographer out of his own funds and brought suit to recover such amount from the county. The court again pointed out that since there was no specific statutory authority for appointing and compensating a stenographer for the prosecuting attorney, such matter was, under the County Budget Law, a proper expenditure of the county in the discretion of the county court, and that when said county court acted upon such matter in a nonarbitrary and reasonable fashion, the decision of the county court was final and the prosecuting attorney could not recover. This was the case of *Miller v. Webster County*, (Mo. Sup.), 228 SW2d 706, where in reaching its conclusion, the court said, i.c. 708:

"\* \* \* This is not to deny in every instance certain specific items of expense merely because they are not provided for by statute.

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For example, where the officer is performing a duty enjoined on him by statute necessarily expends his own funds, there being no statutory provision for meeting these expenses out of the public treasury, he may be reimbursed for such expenses.' Maxwell v. Andrew County, 347 Mo. 156, 164, 146 S.W.2d 621, 625; Ewing v. Vernon County, supra. And in this case reimbursement is not denied merely because the statutes relating to prosecuting attorneys make no provision for stenographers or stenographic hire in counties of the third and fourth class. But, since the statutes relating to prosecuting attorneys in certain other classes of counties do make provision for stenographic hire and the statutes relating to prosecuting attorneys in third and fourth class counties make no such provision, the plain implication of the statutes and particularly of the County Budget Law is that the County Courts in those counties have been invested with the discretionary quasi-legislative function and duty, State ex rel. Dietrich v. Daues, 315 Mo. 701, 287 S.W. 430, of determining the necessity and amount of expenditures not otherwise specifically provided for by statute.\* \* \*

An examination of the statute concerning county treasurers reveals that in larger counties the hiring of clerks is authorized and their compensation is set, but no such provisions are found applicable to third class counties. This situation thus is the same as that considered in the above cases and it is therefore submitted that such cases control the answer to your question.

#### CONCLUSION.

From the foregoing, it is the conclusion of this office that it would be perfectly proper for the county court, in considering its budget, to include therein an amount for compensation of a clerk in the office of the county treasurer if in its sound discretion and acting in a nonarbitrary fashion the county court decides that the expenditure is reasonably necessary for the discharge of

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the official duties of the treasurer. In the absence of such action by the county court, it would appear that if the treasurer paid a salary to a clerk in his office out of his own funds, such amount might be recoverable if the services rendered were indispensably necessary to the performance of his official duties but that unless provisions of the County Budget Law were complied with, the treasurer could not recover such amounts from the county if the county properly raised the defense of the County Budget Law in such suit.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

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