

ASSISTANT PROSECUTING ATTORNEYS: County court is bound by Sections
INCREASED PERSONNEL IN COUNTY 56.150 and 56.160, RSMo 1949, as
PROSECUTOR'S OFFICE: amended by the 68th General Assembly;
COUNTY BUDGET LAW: mandamus will lie to compel county
court to pay the increased salary of
prosecuting attorney's employees,
and the salaries of the increased
number of prosecuting attorney's
employees.



September 20, 1955

Honorable Richard K. Phelps
Prosecuting Attorney
Jackson County
415 East Twelfth Street
Kansas City, Missouri

Dear Sir:

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

"As you know, the number of assistant prosecutors, except the First Assistant and Class 'A' Assistants, and also the number of investigators, clerks and stenographers in my office is determined in the manner provided for in Section 56.150 R. S. Mo. 1949. This section provides that the number of assistants, of investigators, of stenographers and clerks is to be determined by the Circuit Court en banc.

"The salaries of such personnel are fixed by the provisions of Section 56.160.

"At the last session of the Missouri General Assembly the salaries of all the personnel in the Prosecuting Attorney's office were increased by statute, approved by the Governor and effective for the month of September. This applies to everyone in my office except myself.

"In February of this year the circuit court en banc made an order fixing the number of my Class 'B' assistants at thirteen, the number of investigators at five, the number of stenographers at ten and no clerks.

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"The County Court thereafter, by letter, notified me that it was not allowing me sufficient funds in my salary budget to pay this number of assistants, investigators and stenographers and by letter directed me not to exceed the expenditure in any one month of more than one twelfth of \$115,000.00, my salary budget for the year. The total amount of salaries to all assistants, investigators and stenographers had been approximately \$117,000.00 before the order of the Circuit Court increasing the number of assistants, stenographers and clerks.

"Rather than become involved in any legal action to compel the County Court to appropriate sufficient funds to carry out the Circuit Court's order we have gone along with limited personnel which we were able to keep under our decreased salary budget.

"For the remaining months of the year we will have enough money each month in our salary budget to pay our present personnel, even at the increased rates provided by the last General Assembly, but that would use our entire monthly budget with the exception of a few dollars. I would like to submit to you for an opinion the following questions:

"(1) Is the County Court bound by Section 56.150, particularly as it relates to the number of Class 'B' assistants as fixed by order of the Circuit Court's order en banc and if the Circuit Court sitting en banc does allow me an increased number of assistants (as it did) is the County Court obliged under the

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law to provide for the payment of such additional personnel upon a submitted payroll?

"(2) Is it your opinion that mandamus would lie to compel the County Court to provide the money necessary to pay the salaries of such increased personnel?

"(3) Has the County Court, under its general budgetary powers, discretion to refuse to pay such personnel in spite of the order of the Circuit Court sitting en banc, if it should claim that in its judgment there is not sufficient revenue in the county treasury to make such payment?

"(4) Is the County Court required by the law enacted by the 1955 General Assembly increasing the salaries of personnel in the Prosecuting Attorney's office to provide the money for the payment of such increases in salaries, in addition to what money is already in the salary budget of the Prosecuting Attorney, if he should find it necessary to appoint additional assistants and additional stenographers, and may the County Court be required so to do by mandamus?"

On the 15th day of November, 1951, this department rendered an opinion to Honorable Edgar Mayfield, Prosecuting Attorney of LaClede County, a copy of which is enclosed, which we believe answers your inquiries to a considerable degree.

Naturally, there are different facts in the Mayfield case from those confronting you; for one thing, the class of the counties is different but we believe this makes no difference in the law in point. In the Mayfield case the circuit court raised the employee's salary; in your case the legislature, itself, raised it. In each case many facts are similar; in

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each the circuit court either raised the salaries or increased the number of employees under statutory authority; in each case the circuit court's action followed the preparation of the budget; in both classes of counties the budget law contains specific directions for the preparation of the budget.

A study of Section 56.150, RSMo 1949, reveals that it contains features similar to those contained in Section 57.250, RSMo 1949, the section construed in the Mayfield opinion. Section 56.150 is specific in its provisions regarding the selection of assistants. It relieves the county court of the necessity of determining the number of such; leaves no discretion to be exercised by the county court, and leaves that court with ministerial duties only with respect to the numbers and the salaries.

Section 50.540 in no way conflicts because that section states that the county court shall "fix all salaries of employees other than those established by law."

* In our opinion the county court is bound by Section 56.150, both as it pertains to Class "B" assistants as fixed by the order of the circuit court, and as it pertains to the county court's obligation to provide for the payment of such additional personnel.

Your next question is: "(2) Is it your opinion that mandamus would lie to compel the County Court to provide the money necessary to pay the salaries of such increased personnel?"

As noted in our discussion of the first question, the county court is left with no discretion. It has been said that a county court has no powers except those granted or limited by law and, like all other agents, it must pursue its authority and act within the scope of its powers, and in auditing claims the county court acts merely as the fiscal or administrative agent of the county. Where the duty to pay the salary of a public officer or employee is purely ministerial, involving no element of discretion and there is no adequate legal remedy whereby payment may be enforced, mandamus is ordinarily the proper remedy to compel payment. 55 C.J.S., Section 72, page 125. See, also, 5 A.L.R. 572, 573.

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You next ask "Has the County Court, under its general budgetary powers, discretion to refuse to pay such personnel in spite of the order of the Circuit Court sitting en banc, if it should claim that in its judgment there is not sufficient revenue in the county to make such payment?"

You will note in the Gill v. Buchanan County case, 142 S. W. (2d) 665, the question of insufficient revenue was raised. The court said that the failure on the part of the county court to budget for the mandatory obligations imposed by the legislature does not affect the county's obligation to pay them. As we pointed out, *supra*, in the instant case as well as in the Mayfield case, the action by the circuit court followed the preparation of the budget. It is our opinion that the act of the legislature delegating to the circuit court the power to increase the number of assistants is, after the circuit court fixes the number, the same as if the legislature itself had fixed the number. The situation seems to be no different from that in which the legislature itself raises the salaries. The salaries for the increased personnel would automatically be included in the county budget, even though the increases did not become effective until several months following the fixing of the budget.

In State ex rel Taylor v. Wade, 231 S. W. (2d) 179, which was a mandamus action to compel a county court to publish a financial statement at the end of the year, the court stated that the facts that there were no provisions in the budget for the expense of such publication and that there were no surplus funds available for the purpose were not decisive, and the court cited Gill v. Buchanan County. The legislature had directed that the statement be published. That amounted to a directive to the county court to include enough in the budget for that purpose.

In State ex rel v. Gilbert, 163 Mo. App., 1. c. 685, the court held that the county court was bound to issue a warrant for the payment of an officer's salary whether there was money in the treasury or not.

In the instant case it would seem that the action of the legislature imposed the obligation upon the court to amend the

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budget when, during the year, changing circumstances so dictated. In the cases cited in which questions arose in third and fourth class counties the provisions of the County Budget Law were involved the same as in your case. Though the provisions of the County Budget Law are not as detailed for third and fourth class counties as for first class, nevertheless, we find nothing in the County Budget Law for first class counties that justifies a contention that insufficient revenue is an excuse for nonpayment of the salaries; we find nothing in the County Budget Law that gives rise to a discretion on the part of the county court in the matter of following or not following the legislative mandate.

Your fourth question is as follows: "(4) Is the County Court required by the law enacted by the 1955 General Assembly increasing the salaries of personnel in the Prosecuting Attorney's office to provide the money for the payment of such increases in salaries, in addition to what money is already in the salary budget of the Prosecuting Attorney, if he should find it necessary to appoint additional assistants and additional stenographers, and may the County Court be required so to do by mandamus?"

As pointed out above, it is our opinion that there is no difference in the obligation imposed upon the county court in the payment of increased salaries of the present personnel and the payment of the salaries of the increased personnel.

CONCLUSION

It is the opinion of this department that: (1) a county court is bound by Section 56.150, RSMo 1949, as it pertains to the number of Class "B" assistants as fixed by the order of the circuit court; (2) the county court is obligated to pay the salaries of the increased personnel ordered by the circuit court; (3) the county court is obligated to issue warrants covering such salary increases even though there is not money immediately available for such purpose; (4) mandamus will lie to compel a county court to provide the money

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necessary to pay the salaries of increased personnel, and to compel the payment of increased salaries of present personnel; (5) a county court has no discretion under its general budgetary powers to refuse to pay either the salaries of increased personnel or the increased salaries of the present personnel.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General

RSN:lc

1 enclosure