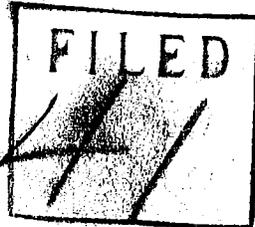


COURT REPORTER:
REPORTER:

One-fourth of the compensation allowed to a temporary court reporter, under the provisions of Chapter 485 RSMo Cum. Supp., 1955, is payable out of the state treasury. The state's part of the compensation allowed to a temporary court reporter is in addition to the amount that the state is obligated to pay the regular court reporter.



August 27, 1956

Honorable Maskell Holman
State Auditor
Capitol Building
Jefferson City, Missouri

Dear Mr. Holman:

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

"It is requested that you furnish this department with an official opinion stating whether or not the State of Missouri is liable for all or part of the compensation authorized a temporary court reporter under the provisions of Section 485.075, House Bill No. 385, Laws of Missouri 1955 (1955 Cumulative Supplement page 1004); and, if so, is said compensation in addition to the compensation of the regular reporter appointed for said circuit or division of said circuit, or should this amount be withheld from the compensation due the regular reporter?"

Section 485.075 RSMo Cum. Supp., 1955, relating to the appointment of a temporary court reporter, in the event of the illness or physical incapacity of the regular reporter, reads as follows:

"In the absence of the official reporter of any circuit court or any division of any circuit court, or of any court of common pleas, or of any court of criminal correction because of illness or physical incapacity to perform his duties, the judge of such court may appoint a temporary reporter, who shall perform the same duties and receive the same compensation as provided for the regular reporter for the time served by the appointee as temporary reporter, to be paid upon certification of the judge making such appointment. No temporary appointment shall continue through more than thirty court days in any calendar year."

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It is to be noted that such section provides that the temporary reporter shall "receive the same compensation as provided for the regular reporter for the time served".

Sections 485.060 and 485.065 RSMo Cum. Supp., 1955, provide for the compensation of the regular court reporter as follows:

Sec. 485.060. "The court reporter for a circuit or common pleas court shall receive an annual salary of six thousand dollars, payable in equal monthly installments on the certification of the judge of the court or division in whose court the reporter is employed."

Sec. 485.065. "Three-fourths of the salary of the court reporter shall be paid out of the county treasury and one-fourth out of the state treasury. Where a judicial circuit is composed of more than one county, the county part of the salary shall be divided among the counties and be paid by them proportionately as the population of such county bears to the entire population of the circuit."

Under the authority of the foregoing noted statutory provisions, we are of the opinion that the state is obligated to pay one-fourth of the compensation allowed to a temporary reporter.

You next inquire whether the state's portion of a temporary reporter's compensation is in addition to the compensation allowed the regular reporter for the same period or whether the amount paid to the temporary reporter should be withheld from the compensation provided for the regular reporter. Section 485.060, supra, provides for an annual compensation payable to the regular court reporter. The monthly installments provided for are not contingent upon the actual performance of duties during said month. This is, of course, in accord with the general rule that the right to compensation is an incident of the office and is not dependent upon an exercise of the functions of the office. This rule is stated in the case of Stratton v. City of Warrensburg, 167 SW2d 392, l.c. 396, as follows:

"* * * The true rule is that the right to the compensation attached to an office is an incident to the legal right to the office and not to the exercise of the functions of the office. Cunio v. Franklin County, 315 Mo. 405, 285 S.W. 1007, and cases cited."

We are unable to find any provision in Chapter 485 RSMo Cum. Supp., 1955, which would indicate that the appointment of a temporary court reporter would in any way affect the appointment of the regular reporter. Therefore, we are of the opinion that so long as the regular reporter is duly and legally appointed, such reporter

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is entitled to receive the compensation provided by law, and that the compensation allowed a temporary reporter would be in addition to that allowed the regular reporter.

CONCLUSION

Therefore, it is the opinion of this office that one-fourth of the compensation allowed to a temporary court reporter under the provisions of Chapter 485 RSMo Cum. Supp., 1955, is payable out of the state treasury.

We are further of the opinion that the state's part of the compensation allowed to a temporary court reporter is in addition to the amount that the state is obligated to pay the regular court reporter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton

DDG/ld