

COUNTY HOSPITALS:
OFFICERS:

Trustees of county hospital organized as provided in Section 205.190, RSMo 1949, are unauthorized to provide salary for one of their members acting as secretary to the board of trustees.



March 10, 1958

Honorable William E. Gladden
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Gladden:

The following opinion is rendered in reply to your inquiry reading, in part, as follows:

"In view of the provisions in Section 205.190, V.A.M.S. 1949, is a County Hospital Board of Trustees authorized to pay a salary to one of the said members of the Board as secretary of the Board? To further amplify on the situation in our County, the County Hospital Board of Trustees has elected one of the said Trustees as the secretary of the Board and this secretary has been authorized by the Board to oversee the construction and purchasing of equipment and establishing a staff for the County Hospital which is now under construction. Because of these extensive duties of the secretary, which are over and above his regular duties of acting as secretary at any meeting, the Board has voted to pay this secretary a regular monthly salary and the secretary is retaining his place as a member of the Board of Trustees."

Section 205.190, RSMo 1949, provides for the organization of the board of trustees for the county hospital and provides, in part:

"1. The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them.

Honorable William E. Gladden

* * * * *

"3. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary and allowed only by the affirmative vote of all of the trustees present at a meeting of the board. *** " (Emphasis supplied.)

That portion of Section 205.190, RSMo 1949, quoted above, stating that "no trustee shall receive any compensation for his services performed" is clear and unmistakable in its language and must be considered as a mandatory directive to the trustees. In *Fulton v. City of Lockwood*, 269 S.W. (2d) 1, 1.c. 8, we find an applicable rule stated as follows:

"The protection of the public and the declared public policy requires public officials to comply with mandatory statutory provisions, and such requirements may not be avoided by a compliance only when the official sees fit to comply."

It may not be contended that the trustee who is also denominated secretary of the board of trustees may serve in both capacities in this instance in view of the following language from *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 344 Mo. 795, 1.c. 800:

"Appellant contends he may act in two different capacities at the same time and that compensation received in one capacity will not be treated as compensation received in the other. Appellant overlooks the fact that the existence of the two capacities, employer and employee, in the same individual is incompatible and is peremptorily prohibited by law."

CONCLUSION

It is the opinion of this office that a member of the county hospital board of trustees organized under Section 205.190, RSMo 1949, who is elected secretary of said board of trustees, may not receive compensation for performing any duties as such secretary.

Honorable William E. Gladden

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General