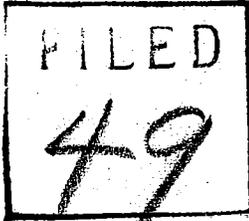


**COUNTY COURT:
COUNTY ASSESSOR:
ASSESSOR:
OFFICERS:
COUNTY OFFICERS:
CLERICAL ASSISTANTS:**

In third and fourth class counties, allowance to county assessor for clerical and stenographic assistants is determined by county court in amount not to exceed \$600 in fourth class counties and \$1,200 in third class counties.



December 31, 1959

Honorable John G. Kibbe
Prosecuting Attorney
Moniteau County
California, Missouri

Dear Sir:

This is in answer to your recent letter requesting an official opinion of this office, and reading as follows:

"Our county court has asked me to request an opinion concerning Section 53.095, Missouri Revised Statutes, providing for appointment and compensation of assistants to the county assessors in third and fourth class counties.

"The first sentence of this statute states that the assessor may fix the compensation of such assistants. The second sentence says that same shall be paid from the county treasury subject to the approval of the county court.

"If the county court and assessor fail to agree upon the compensation of such an assistant, who has the ultimate authority to determine the amount?"

Section 53.095, House Bill No. 87 of the 70th General Assembly, provides as follows:

"The county assessor in each county of classes three and four may appoint and fix the compensation of such clerical or stenographic assistants as may be necessary for the efficient performance of the duties of his office. The compensation of the clerical or stenographic assistants shall be paid from

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the county treasury subject to the approval of the county court, and shall not exceed twelve hundred dollars per annum in counties of class three and six hundred dollars per annum in counties of class four."

Under the provisions of the first sentence of Section 53.095, the county assessors in counties of class three and four are given authority to appoint and fix the compensation of clerical or stenographic assistants necessary for the efficient performance of the duties of such office. However, the succeeding sentence, relating to the compensation to be allowed for such clerical and stenographic assistants, provides that the compensation of such clerical or stenographic assistants is to be paid from the county treasury "subject to the approval of the county court," and further provides a maximum amount that may be allowed. We believe it to be clear that the provision stating the compensation is to be paid "subject to the approval of the county court" is a legislative delegation of the power to the county court to determine in a nonarbitrary manner the amount that is necessary to be allowed to the county assessor for clerical and stenographic assistants.

In the case of State ex rel. v. Daues, 287 SW 430, 315 Mo. 701, the Supreme Court had under consideration a statute providing that the county court should allow the county treasurer such compensation as "may be deemed just and reasonable." At SW 1.c. 431 the court said:

"It requires no citation of authority to show that the power to prescribe a salary as an incident to a public office is purely legislative in character. That power, as respects the office of county treasurer, the Legislature has delegated to the county court, the agency most familiar with the fiscal affairs and financial condition of the county, as well as the services required to be performed by the treasurer - which may vary in different counties and at different times in the same county. The only limitation upon the power is that the compensation allowed thereunder be such as may be deemed just and reasonable. What is just and reasonable in a given case is committed to the discretion of the county court and to it only. * * *"

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In the case of Miller v. Webster County, 228 SW2d 706, the Supreme Court quoted from the case of Bradford v. Phelps County, 210 SW 996, and said, l.c. 708-709:

" * * * 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.'
* * *"

The court further said, l.c. 709:

" * * * The evidence does not demonstrate that the County Court, in refusing to make an allowance for stenographic hire for the Prosecuting Attorney of Webster County acted so arbitrarily and capriciously or so abused its discretion that either this court or the circuit court may substitute their judgment for that of the County Court in the circumstances. * * *"

Under the holding by the Supreme Court in these cases, it is our view that under the provisions of Section 53.095, supra, the determination of the amount to be allowed county assessors in counties of the third and fourth class for clerical and stenographic assistants is in the discretion of the county court

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and such determination cannot be overthrown, as long as the county court does not act arbitrarily and capriciously but does act in an honest, nonarbitrary manner.

CONCLUSION

It is the opinion of this office that the determination of the amount to be allowed to county assessors in counties of the third and fourth class for clerical and stenographic assistants is left to the honest, nonarbitrary discretion of the county courts of such counties, provided that the allowance cannot exceed the sum of \$600 in fourth class counties and \$1,200 in third class counties.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

CEB:ml