

COUNTY TREASURERS: The county has a duty to reimburse county
COUNTY OFFICERS: treasurer for his expenses in making bank
COUNTY DEPOSITORIES: deposits at the various county depositories,
where such depositories are located outside
the county seat. Reimbursement may be made on
the basis of actual expenses or by mileage, but
if made on a mileage basis, it must not exceed
actual expenses.

July 22, 1960

Honorable Frederick Steck
Prosecuting Attorney
Scott County
Sikeston, Missouri



Dear Sir:

This is in reply to your recent request for an opinion as to whether or not it is the duty on the part of the county to pay the county treasurer mileage for making bank deposits. Your request reads:

"I would appreciate an opinion as to whether or not it is the duty of the County to pay the County Treasurer mileage for going to different Banks in Scott County to deposit money when there is no Bank in the County seat, Benton, Missouri."

Compensation of county treasurers is provided by Section 54.260, V.A.M.S., enacted during the last legislative session. This section provides for salary compensation of county treasurers in third-class counties according to population and concludes with the following sentence: "The salaries are in lieu of any other or additional salaries, fees, commissions or emoluments of whatsoever kind."

In enacting this provision as to the treasurer's office, the Legislature established the treasurer's full compensation in third-class counties. It is well established cannon of law relating to compensation of public officers, that in order to claim compensation for their services, a county officer must be able to point to a statute providing such compensation and Section 54.260, supra, clearly and specifically limits compensation. It remains to be decided, however, whether mileage payments to the treasurer for making bank deposits are compensation to this officer or an expense of the office.

Expenses of the county treasurer's office are paid by the county. Sections 54.100 and 54.110, RSMo 1949, read as follows:

Sec. 54.100:

"The county treasurer shall keep his office at the county seat of the county for which he was elected, and shall attend the same during the usual business hours. The county court shall provide said county treasurer with suitable rooms, and a secure vault in the courthouse or other building occupied by other county officers, and the county treasurer shall keep his office and records in such rooms and vault provided by the county court. He shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court."

Sec. 54.110:

"He shall provide, under the direction of the county court, suitable books and stationery for his office, and preserve the same; and the court shall audit his account, and allow such sum as shall be reasonable, which shall be paid by the county."

The county, by the terms of Section 54.070, RSMo, pays for the treasurer's general bond for the faithful performance of his duties and Section 54.160, V.A.M.S., provides that the county pays for the treasurer's bond in connection with the handling of school funds.

Our Supreme Court in the case of Buchanan vs. Ralls County, 283 Mo. 10, 222 S.W. 1002, confirmed that it was incumbent upon the county to provide suitable office space, janitorial services, etc., for the county treasurer or that the county treasurer might provide these necessities and seek reimbursement.

Chapter 54, RSMo 1949, the chapter of our statutes which governs the duties, compensation and expenses of the office of county treasurer do not provide mileage as an expense for any purpose, neither does this chapter establish a duty incumbent upon the county treasurer to make bank deposits to the various depositories selected by the county court. Since those duties are established under the provisions of Chapter 110, RSMo 1949, governing the depository of public funds, we next turn to a consideration of the provisions of that chapter of our laws.

Honorable Frederick Steck

By the terms of Section 110.170, V.A.M.S., the county treasurer is required to immediately make deposits in the various county depositories, according to their proper share of the funds let. If the treasurer does not make these deposits, he is subject to a penalty which accrues to the depository bank. Section 110.170, V.A.M.S., reads:

"1. As soon as the required security is given and approved, the court shall make an order designating the successful bidders as depositories of the funds until sixty-five days after the time fixed by sections 110.130 to 110.260 for another selection, and thereupon the county treasurer, and the ex officio collector if the county be under township organization, shall immediately upon the making of the order, transfer to the depositories the part or parts of all funds respectively let to the depositories under the selection, and immediately upon the receipt of any money thereafter deposit it with the depositories to the credit of the county. The said treasurer shall, as nearly as may be, maintain with each of the depositories selected its due and proportionate share of the total of the funds let.

"2. For any failure of the county treasurer to make transfer of the funds or to deposit all of the funds with the depositories, whether the same shall come into his hands as treasurer or as ex officio collector of the revenue, or otherwise, he is liable to the depositories, respectively, for ten per cent per month, during such failure, upon the respective part or parts of said funds not so deposited, to be recovered by civil action.

"3. In counties under township organization the township trustee shall deposit all school taxes received by him with the depository selected by the township board of his township as the depository of the township funds; and in default of the selection of a depository by the township board, and during the time when any township has no depository of its funds,

Honorable Frederick Steck

the township trustee shall deposit all school taxes and all township funds received by him in any county depository within the township, if there be one; if not, then in the county depository most convenient to the township, and such county depository shall thereupon pay to the township the same rate of interest upon the moneys which it has contracted to pay the county upon its funds, and the township may recover the same by civil action."

If the treasurer is required to travel to points outside the county seat or to several places throughout the county to make deposits, then the expenses incurred by him in making deposits are an expense of the office, which should be paid by the county. It is true that he cannot point to a specific statute granting compensation or mileage for this duty, but we think that this is an expense of the office, not a "salary," "fee," "commission", or "emolument."

In Harlen County v. Blair, 243 Ky. 777, 49 S.W.2d 1028, the Kentucky Supreme Court differentiated fees and expenses as follows:

"Expenses incurred in performing services is distinct and separate from fees allowed for rendering such services. Fees to an officer are recompense for his services, while expenses allowed him are designed to indemnify or reimburse him for funds expended in performing his duties."

"Commission" denotes percentage compensation for service performed and is used at times synonymously with the terms "percentage" and "fee." See in this respect City of Pittsburg vs. Grenet, 238 Pa. 567, 86 Atl. 462, 465.

In Marioneaux v. Cutler, 32 Utah 475, 91 Pac. 355, the Supreme Court of Utah, considered the payment of mileage in relation to "salary" or "compensation." The court in that case set a dividing line as to when the payment of mileage becomes an addition to "salary" or "compensation" in the following language, 91 Pac., l.c. 358:

"By reference to 7 Words and Phrases, p. 6287 et seq., under the title 'Salary,' it will be seen that the term 'salary' may be and is variously applied. It is usually used as

Honorable Frederick Steck

designating recompense, reward, or compensation for services rendered. Mileage may become a part of compensation. If the mileage allowance is limited to the amount actually expended in traveling, then it cannot, of course, add anything to the income of the recipient of the salary. But, if the mileage is not so limited, as where a certain amount is allowed for each mile traveled and this amount exceeds the actual mileage charged, then the balance above such charge becomes a part of the official income or compensation the same as though it were a part of the salary. As a concrete proposition, it is not controlling that such accretions to official compensation are not designated as salary. It is not unusual, as is generally known, to allow large mileage to eke out the compensation of officers. It can make no difference in principle, however, whether the mileage allowance be much or little above the actual charge, so long as it is not limited to the actual cost of mileage, but is fixed by a round sum per mile. In such event the portion of unexpended mileage may be added to the compensation, and hence may be intended as a part of the compensation. * * *"
(Emphasis ours.)

Perhaps the most important Missouri case differentiating "expenses" from "compensation" as to county officers is Rinehart v. Howell County, 348 Mo. 421, 153 S.W.2d 381. In that case the Missouri Supreme Court took recognition of the fact that outlays for expenditures, as differentiated from compensation could be allowed a county officer, even where there is no statutory provision for reimbursement. We quote 153 S.W. 2d, 1.c. 382:

"[3] So far as presented for review, the record, viewed in the light of the judgment for respondent, is to be considered as establishing that the expenditures for which respondent asked reimbursement were for indispensable outlays for stenographic services incurred in the discharge of his official duties. Appellant offered no evidence and its brief does not question the probative value of respondent's testimony tending to establish said fact. The case is to be distinguished from cases announcing the rule that officials may not receive compensation in addition to that authorized by law. * * *"

Honorable Frederick Steck

Continuing after citation of Missouri authorities at l.c. 382, the court said:

"* * *Maxwell v. Andrew County, supra, involved, sufficient for the purposes here, charges asserted against the county by Maxwell, as sheriff for the use of his automobile 'on calls.' Maxwell testified he attempted to keep the charges within \$75 a month. There was no attempt to justify them on the basis of actual outlays bona fide expended or even mileage. This resulted in the case being discussed on the theory said officer sought compensation in addition to that specifically provided by law. We also mention that General Assembly had specified the instances in which compensation to said sheriff for mileage was allowable and, so far as there involved, in Sec. 13415, R.S. 1939, Mo. St. Ann. p. 7017, Sec. 11793, had expressly prohibited 'fees for any other services than those in the two preceding sections enumerated.' Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. 2d 857, likewise involved income and did not involve bona fide outlays. The instant case was submitted on the theory, as disclosed by the stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in Ewing v. Vernon County, 216 Mo. 681, 695, 116 S.W. 518, 522(b). That case quoted with approval a passage from 23 Am. and Eng. Ency. Law, 2d Ed., 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories and held a recorder entitled to reimbursement for outlays for necessary janitor service and stamps, stating: "Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore those statutes relating to fees to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo." (Emphasis ours.)

For other similar pronouncements by Missouri courts see Macon County v. Williams, 284 Mo. 447, 224 S.W. 835; Bradford v. Phelps County, 357 Mo. 830, 210 S.W.2d 996; Miller v. Webster County, Mo. Sup., 228 S.W. 2d 706.

Honorable Frederick Steck

One recognizable factor emerges from these cases, i.e., a county officer may be reimbursed in such a situation for his actual expenses or outlays, but to receive more than his actual expenses enters the realm of being an increase in his salary or compensation. Accordingly the county should reimburse this office for his actual expenses and may do so with a per mile basis as it chooses, provided, however, that if paid on a per-mile basis, it must not exceed his actual expenses.

CONCLUSION

Therefore, it is the opinion of this office that the county has a duty to reimburse the treasurer for his actual expenses in making bank deposits where there are one or more county depositories located outside the county seat. The county court may provide reimbursement either on an actual-expense basis or a per-mile basis, but the amount paid must not exceed the treasurer's actual expense in making deposits.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jerry B. Buxton.

Very truly yours,

John M. Dalton
Attorney General

JBB:mw:gm