

SURPLUS COMMODITIES:
COUNTY COURTS:
COUNTY OFFICERS:
COUNTY CLERK:
COUNTY TREASURER:
COUNTY SUPERINTENDENT
OF SCHOOLS:

Judges of the county court are prohibited from receiving extra compensation from county for services they render in distribution of surplus commodities. County clerk and county treasurer may receive extra compensation from the county for services they render beyond their official duties in the distribution of surplus commodities. County superintendent of schools may receive compensation from the county for any service he renders in the distribution of surplus commodities.

September 8, 1961



Honorable Proctor N. Carter
Director of Welfare
Division of Welfare
State Department of Public
Health and Welfare
Jefferson City, Missouri

Dear Mr. Carter:

In your letter of July 12, 1961, you request an opinion on the following matter:

"Under the provisions of Senate Bill No. 147, 71st General Assembly, State funds have been made available authorizing the Division of Welfare to pay one-half of the cost of surplus commodities distribution, such distribution having been made by any County or any City not within a County. This Bill carried an emergency clause and became effective on April 10, 1961. The Division of Welfare is authorized to reimburse a County or City in an amount equal to 50% of the sum expended during a particular month 'provided the expenditures have been approved by the Division of Welfare'.

"In a few Counties requests for reimbursement have included extra compensation paid to County Judges, County Clerks and County Treasurers for services performed in distributing surplus commodities. The Counties from which such requests have been received are all Third and Fourth Class Counties.

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"In determining whether or not to approve the requests for reimbursement as to extra compensation paid to County Judges, County Clerks and County Treasurers for services rendered in the distribution of surplus commodities I would appreciate receiving an opinion from you as to the validity of extra compensation payments being made to such County Officials for their services."

After submitting the above request, you have made an additional request to include in our opinion whether the county superintendent of schools would be entitled to receive compensation for services rendered by him in connection with the administration of the surplus commodity program.

You want to know whether county judges, county clerks, county treasurers, or county superintendents of schools may receive extra compensation from the county for services performed by them in the distribution of surplus commodities in the county.

Senate Bill 147, recently enacted by the Legislature, provides in part:

"Section 1. Any county or any city not within a county may establish a program for the acquisition, storage and distribution of surplus agricultural commodities to needy persons pursuant to acts of the congress of the United States, and may rent, lease or otherwise provide the necessary storage and distribution facilities therefor. The county or city may enter into contracts or agreement with any other county or city not within a county for the establishment and operation of a joint program or for the joint use of facilities or services.

"Section 2. The director of the division of welfare of the department of public health and welfare shall make and promulgate necessary and reasonable regulations for the administration of the programs established pursuant to section 1, and for the certification of the eligibility of recipients of the commodities.

"Section 3. The division of welfare of the department of public health and welfare shall, on or about the fifteenth day of each

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month reimburse any county or city not within a county in an amount equal to fifty per cent of the sum expended by the county or city for the acquisition, warehousing and necessary cold storage, safe-keeping, maintenance of proper records and distribution of surplus agricultural commodities during the preceding month; provided the expenditures have been approved by the division of welfare."

Under Section 1 any county or any city not within a county may establish a program for the acquisition, storage and distribution of surplus agricultural commodities to the needy persons pursuant to the acts of Congress of the United States. When the county decides to enter into this program it becomes a county function and is to be governed by the terms of this statute and other provisions of law applying to county governments.

The judges of the county court, county clerk, county treasurer and county superintendent of schools are all county officials and the law applicable to public officials should be applied.

We shall first state some general principles of law that apply to public officials. In 20 C.J.S., Counties, § 114, the law regarding extra compensation for county officials is stated as follows:

"Where the salary or compensation of a county official is definitely fixed by law, it is generally held that such sum is intended to include his entire official remuneration, and to preclude extra charges for any services whatsoever, unless it is clear that the statute contemplated and intended additional compensation for certain extra services. The basic test, however, is whether the services on which the claim for additional compensation rests were within the scope of duties imposed by the statute fixing the compensation; and compensation may be recovered by a county official for the performance of services entirely outside the scope of the duties of the office, where the services were performed under a lawful contract with the county commissioners. Generally speaking it may be said that when enumerating the fees which a particular officer may charge it will be presumed that

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the legislature meant to designate with precision the services for which he should receive fees, and that such fees should be his full compensation for services incidental to his office. In arriving at these conclusions, the courts apply the general rule that, where a statute imposes a duty on a public officer, it is presumed to be performed by him in consideration of the general emoluments of his office, unless the legislature has clearly indicated that compensation shall be paid for the performance of the duty so imposed."

In 159 A.L.R. Ann., p. 606, 607 and 608, it is stated:

"As a general rule the salary attached to a public office constitutes the full compensation for all the services required to be performed by a public officer, so that he may not assert a right to additional compensation although by statute or ordinance the duties of his office, as it was constituted at the time of his appointment, have been increased, or he has performed additional services which are merely incidental to the duties of his office."

"(1) If the extra services which the officer undertakes to perform at an agreed extra compensation are a part of or germane to the official duties of his office or are merely incidental to those duties, the existence of an express contract for additional compensation does not prevent the operation of the rule referred to supra, I, that he is not entitled to extra compensation for extra services rendered by him. In such case the contract for additional compensation is invalid as against public policy."

The above rules apply when an officer is performing his official duties. When an officer performs duties outside of his official duties the rule is stated, as follows, in 43 Am. Jur., Public Officers, § 364:

"The law does not, of course, forbid extra compensation for extra services which have no affinity or connection with the duties of the office. Where the duties

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newly imposed upon the officer are not merely incidents of and germane to the office, but embrace a new field, and are beyond the scope and range of the office as it theretofore existed and functioned, the incumbent may be awarded extra compensation for the performance of such duties without violating a constitutional inhibition against increase of salary during the term. The rule has been applied to allow extra compensation to an officer employed outside his official duties to conduct litigation for the public, or to an officer rendering services of such a character that he is called upon to risk or give his life or incur permanent disablement. So, a health officer, unless prevented by statute, may recover reasonable compensation for extra services performed by him during an epidemic."

In State ex rel. Forsee v. Cowan, 284 S.W. 2d 478, 1.c. 481, it is stated:

"The law in Missouri is well established that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. Gammon v. Lafayette County, 76 Mo. 675; State ex rel. Evans v. Gordon, 245 Mo. 12, 149 S.W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S.W. 942; Jackson County v. Stone, 168 Mo. 577, 68 S.W. 926; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S.W. 504; Bates v. City of St. Louis, 153 Mo. 18, 54 S.W. 439, 77 Am.St.Rep. 701; Williams v. Chariton County, 85 Mo. 645. * * * Maxwell v. Andrew County, 347 Mo. 156, 146 S.W.2d 621, 625. " In so far as concerns compensation for services, there is a very imperfect analogy between services rendered by a public officer and those rendered by one individual to another in a private capacity. The law implies in the latter case a promise to pay as much money as the services are reasonably worth, whereas the compensation for services of a public officer is in

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most cases fixed by positive law. If the fixed compensation is more than the service is worth, the public or party must pay it; if less, the officer must be content with it." 43. Am. Jur., sec. 362, p. 150.' Alexander v. Stoddard County, Mo.Sup., 210 S.W.2d 107, 109. See also State ex rel. Harrison v. Patterson, 152 Mo.App. 264, 132 S.W. 1183."

"Now, the law is also clear that '[e]ven in the absence of statutory prohibition and even though the work or services consist of "extra services," if they are in point of fact a part of or germane to the official duties of his office, the officer's employment, for obvious reasons, is against public policy and he is not entitled to compensation for performing the services. Annotations 84 A.L.R. 936; 159 A.L.R. 606.' Polk Tp., Sullivan County v. Spencer, Mo.Sup., 259 S.W.2d 804, 805. See also Tyrrell v. Mayor, etc., of City of New York, 159 N.Y. 239, 53 N.E. 1111, 1112; 43 Am. Jur., 'Public Officers', § 363, p. 151."

Since the question you have submitted deals with four separate and distinct county officers, each with different duties and responsibilities, it is necessary to discuss each official separately in this opinion.

Article VI, Section 7, of the Constitution of Missouri provides in part that the county court shall manage all county business as prescribed by law, and keep an accurate record of its proceedings.

When a county court decides to participate in the program for distribution of commodities to the needy people under Senate Bill 147, such a program becomes a county responsibility and has to be administered by the county court. Therefore, the responsibility and duties of administering the program become the duty and responsibility of the judges of the county court. It becomes their duty to administer and supervise the acquisition, storage and distribution of the commodities. In doing so they can act only in their official capacities as members of the county court because under the statute and the constitution such authority is vested in them. However, under Senate Bill 147 the director of the Division of Welfare has authority to promulgate reasonable rules and regulations concerning the administration of this program, which regulations would be binding on the county court.

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Section 49.140, RSMo 1959, provides as follows:

"No judge of any county court shall, directly or indirectly, become a party to any contract to which the county is a party, or act as a road or bridge commissioner, either general or special, or keeper of any poor person."

The preceding statute was construed by the Supreme Court in *Nodaway County vs. Kidder*, 129 S.W. 2d 857. In that case the presiding judge of the county court of Nodaway County has received his salary as a member of the county court. In addition, he received extra compensation for inspecting the county roads and bridges and made miscellaneous trips to purchase supplies for the benefit of the county, for which he received additional compensation. He contended that this additional work was done as employee of the county under an agreement with the other members of the county court. The Supreme Court made the following statement, 1.c. 860:

"[5-7] The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28, 149 S.W. 638; *King v. Riverland Levee Dist.*, 218 Mo. App. 490, 493, 279 S.W. 195, 196; *State ex rel. Wedeking v. McCracken*, 60 Mo. App. 650, 656.

"[8] It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. *State ex rel. Buder v. Hackmann*, 305 Mo. 342, 265 S.W. 532, 534; *State ex rel. Linn County v. Adams*, 172 Mo. 1, 7, 72 S.W. 655; *Williams v. Chariton County*, 85 Mo. 645.

[9,10] The duties performed by appellant, and for which the additional fee or salary and mileage was paid, were with reference to matters pertaining to and relating to his official duties as presiding judge of

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the county court and said services were within the scope of said official duties. The work in which appellant was engaged was directly under the supervision of the county court. Public policy requires that a public officer be denied additional compensation for performing official duties.

"It has been held that employment as city attorney, for which a salary was paid, includes services rendered in connection with a special tax matter, and that compensation as city attorney covers such service, and that a city collector may not contract with such city attorney for additional compensation for services in such matters. *Edwards v. City of Kirkwood*, 162 Mo. App. 576, 579, 142 S.W. 1109."

In the above case, after referring to the above-quoted statute, the court stated that the alleged agreement between the appellant and the county court, of which appellant was a member, was voided under the express terms of the statute. The court also stated such a contract would be void as against public policy even in the absence of such a statute, and made the following statement, l.c. 861:

"[11,12] Appellant's alleged contract was also void as against public policy regardless of the statute. A member of an official board cannot contract with the body of which he is a member. The election by a Board of Commissioners of one of its own members to the office of clerk and agreement to pay him a salary was held void as against public policy. *Town of Carolina Beach v. Mintz*, 212 N.C. 578, 194 S.E. 309; 46 C.J. 1037 Sec. 308."

In *Polk Tp., Sullivan County v. Spencer*, 259 S.W. 2d 804, the defendant was a member of the township board and, in addition to his compensation at the rate of \$2.50 per day as allowed by statute, he was also paid by the county 75 cents per hour for work and labor on the roads and bridges in his township. His employment was authorized by the other two members of the board who approved his accounts and issued the warrants in payment for his services. This was a suit by the township to recover the monies that had been paid the defendant in excess of the statutory compensation. In deciding this case, the court stated, l.c. 805:

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"[1-3] Unquestionably, the general rule is 'that an officer of a public corporation cannot become personally interested in a contract with the board of which he is a member, or in a contract with such public corporation with reference to the performance of any labor or services as to which he has in any way a public duty to perform, either by overseeing or passing upon such labor, or auditing or allowing a claim therefor, or directing the payment thereof.' Annotation 34 L.R.A., N.S., 129, 131; Nodaway County v. Kidder, 344 Mo. 795, 129 S.W.2d 857. Even in the absence of statutory prohibition and even though the work or services consist of 'extra services,' if they are in point of fact a part of or germane to the official duties of his office, the officer's employment, for obvious reasons, is against public policy and he is not entitled to compensation for performing the services. Annotations 84 A.L.R. 936; 159 A.L.R. 606. It was a part of Spencer's duties as a member of the township board to audit all claims, and it was the board's duty to construct, repair and improve roads 'and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor.' Section 229.040, RSMo 1949, V.A.M.S. In short, the services performed by Spencer were a part of and germane to his official duties and his employment by the board was against public policy."

When a county decides to participate in the program for the distribution of surplus commodities under Senate Bill 147, it will have to be administered by the county court and the judges thereof. They will be responsible for the acquisition, storage and distribution of the commodities as promulgated by the Division of Welfare. This will include the performance of any of the work that is necessary for them to perform in their official capacities.

Since this program has to be administered by them and under their supervision, it is our opinion that the county judges are prohibited from entering into any agreement to accept and are prohibited from accepting any compensation from the county for any services rendered by them in connection with the distribution of surplus commodities. They are not only prohibited under

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Section 49.140, supra, but in the absence of such a statute and even though the work consists of services over and above their official duties they are prohibited from receiving any extra compensation from the county for such services since it would be against public policy.

In regard to the county clerk, there is no statute especially prohibiting him from contracting with or from receiving compensation from the county in addition to his statutory compensation as county clerk for any work performed by him in addition to his official duties. Therefore, whether he is entitled to receive additional compensation for any services he might render in administering the surplus commodities program must be determined by application of other principles of law.

As hereinbefore stated, the right of a public official to receive compensation for the performance of his duties depends upon whether the statute provides for compensation. Therefore, if the county clerk has any official duties to perform in connection with the distribution of the commodities, he would not be entitled to any additional compensation for performing those duties because there is no statute allowing him any additional compensation.

Section 51.120, RSMo 1959, provides in part that the county clerk shall keep an accurate record of the orders, rules and proceedings of the county court; keep an accurate account of all monies coming into his hands on account of fees, costs or otherwise, and punctually pay over the same to the person entitled thereto.

Section 51.150, RSMo 1959, in part requires the county clerk to keep regular accounts between the county treasurer and the county, charging him therein with all monies paid into the treasury, and crediting him with the amounts disbursed; to keep just accounts between the county and all persons chargeable with monies payable into the county treasury, or that may become entitled to receive monies therefrom; to file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any account to which the county shall be a party and shall issue warrants on the treasury for all monies ordered to be paid by the county, keep an abstract thereof, and present the same to the county court at every regular term, and balance his accounts as often as the court requires.

We believe it is fair to assume that the county clerk in his official capacity will be required by the county court to keep records on the commodities received and the manner of distribution. It is also probable that the director of the

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Division of Welfare will require the county to keep certain records. In doing so, the county clerk would be acting in his official capacity because any records which the county court would be required to keep, the county clerk would be under duty to keep them. It is our opinion that under the authorities heretofore cited, the county clerk could not receive any extra compensation for performing this clerical work in keeping the records.

The question then arises as to the county clerk performing services outside his official duties, such as transporting commodities or other work other than clerical work. The county clerk would not be under any official duty to perform such work, and such work would not be germane to his official duties.

We have been unable to find any court decisions in this state on the question of a county officer receiving compensation from the county for performing work beyond the scope of his official duties.

The general rule of law is stated in 43 A.J.P., Public Officers, 364, supra. The rule is also stated in 67 C.J.S., Officers, § 88, as follows:

"Where the duties of an officer are increased by the addition of other duties germane to the office without provision for compensation, the officer must perform such duties without extra compensation. So, an officer is not entitled to extra compensation because additional duties pertaining to the office have been assumed by him or imposed on him by the exigencies of the office. Services required of officers by law for which they are not specifically paid must be considered compensated by the fees allowed for other services.

"On the other hand, an officer is not obliged, because his office is salaried, to perform all manner of public service without additional compensation, and for services performed by request, not part of the duties of his office, and which could have been as appropriately performed by any other person, he may recover a proper remuneration. In this connection, although service not required by the law cannot be classed as official duties, nevertheless public policy requires that courts should not favor nice distinctions in order to declare certain acts of public officers extraofficial.

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"Extra services, as applied to services of officers, are services incident to their offices for which compensation is not provided by law."

In the case of State ex rel. Langford v. Kansas City, 261 S.W. 115, the question before the court was whether a deputy sheriff could serve as city clerk at the same time. The court, at page 116, said:

"In State ex rel. v. Bus, 135 Mo. 325, 36 S.W. 636, 33 L.R.A. 616, before the court, en banc, the question was most elaborately considered. MacFarlane, J., rendered the opinion, and it was held that the office of deputy sheriff and school director were neither incompatible at common law nor prohibited by the Constitution, and that the test was, not the physical inability of one person to discharge the duties of both offices at the same time, but some conflict in the duties required of the officers. The court said, at page 338 of 135 Mo. (36 S.W. 639):

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two - some conflict in the duties required of the officers as where one has some supervision of the other, is required to deal with, control, or assist him."

Applying these principles of law to the county clerk, it would appear that he is not prohibited from receiving compensation from the county for extra services performed by him in connection with the distribution of surplus commodities, provided the services he performs are not within his official duties. It is our opinion that the county clerk may accept employment from the county and receive compensation from the county under the above conditions.

In regard to the county treasurer receiving extra compensation from the county for performing services in connection with the distribution of surplus commodities under Senate

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Bill 147, we find no statute expressly prohibiting the county treasurer from contracting with or accepting employment with the county, and his right to receive compensation would have to be determined by the general principles of law applicable to county officials.

The statutory provisions pertaining to the county treasurer are found in Chapter 54, RSMo 1959. In substance they provide for the county treasurer to furnish an account of the receipts and expenditures of the county, to divide the revenue of the county as provided by law, to pay out the revenue thus divided on warrants issued by the county court, from the proper funds, and to keep a separate account of each fund, to make a settlement with the county court of his accounts at stated times, to be custodian of certain school funds and perform certain other duties pertaining to the above.

There is no statutory provision prohibiting the county treasurer from holding more than one office at the same time or from prohibiting him from entering into any contract with the county. Applying the above-stated principles of law, the county treasurer would be prohibited from receiving any compensation for additional work required of him in keeping the records and performing his duties in the office, but he would not be prohibited from receiving additional compensation from the county for doing work beyond his official duties. It is our opinion that the county treasurer may receive compensation from the county for any work performed by him in connection with the distribution of surplus commodities other than his clerical work which he is required to do by law.

The statutory provisions dealing with the office of the county superintendent of schools is found in Chapter 167, RSMo 1959. Section 167.100 provides that during his term of office the county superintendent of schools shall not engage in teaching or in any other employment that interferes with the duties of his office. There is no statute expressly prohibiting him from entering into contracts with the county or from receiving any additional compensation from the county for work performed by him and which work is not germane to his official duties. We find no statute requiring the county superintendent of schools to participate in any manner in the distribution of surplus commodities, and if he does so it is aside from his official duties.

Under the above stated principles of law, it is our opinion a county superintendent of schools would not be prohibited from contracting with the county or from accepting employment with the county and receiving compensation from the county for any service he might render the county in the distribution of surplus commodities as provided in Senate Bill 147.

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CONCLUSION

1. In conclusion, it is the opinion of this office that the judges of the county court are prohibited from receiving extra compensation from the county for services they render in the distribution of surplus commodities under Senate Bill 147.

2. It is also the opinion of this office that a county clerk is not entitled to extra compensation for any services rendered by him in his official capacity such as keeping the necessary records required by the county court in connection with the distribution of surplus commodities, but that the county clerk is not prohibited from receiving additional compensation from the county for any services he may render which have no connection with his official duties.

3. It is our opinion that a county treasurer is not entitled to receive extra compensation from the county for any services he may render in his official capacity, but he is not prohibited from receiving compensation from the county for services he renders over and above his official duties in connection with the distribution of surplus commodities.

4. It is our opinion that a county superintendent of schools has no official duties to perform in the distribution of surplus commodities by the county, and that he may contract with and receive compensation from the county for any services he renders in the distribution of surplus commodities under Senate Bill 147.

The foregoing opinion, which I hereby approve, was prepared by my assistant Moody Mansur.

Very truly yours,

MM:BJ

THOMAS F. EAGLETON
Attorney General