

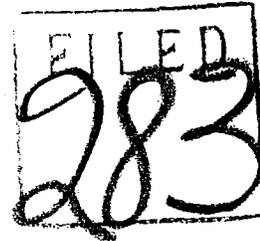
COUNTY COLLECTOR:  
TRAVEL EXPENSES:  
MILEAGE:

Collector of county of second class may receive reimbursement from county court for reasonable travel expenses actually and necessarily incurred in carrying out the official duties imposed by Sections 139.080 and 150.110, RSMo 1959.

OPINION NO. 283

September 10, 1963

Honorable Brunson Hollingsworth  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri



Dear Mr. Hollingsworth:

This is in response to your request for an opinion dated June 27, 1963, as follows:

"Would you please furnish our County Collector, Earl Toulouse, with an Opinion as to whether or not he is entitled to receive mileage.

"The enclosed constitutes his request to me."

"Situation: Traveling expense for the Collector of Revenue in a second class county on a yearly budget

"In the County of Jefferson, the Collector of Revenue is faced with a problem of added expense for travel to conduct his office properly. This added expense of the Collector is paid personally, which benefits both County and State.

"Section 139.080: The Collector has a problem of division of property. It is impossible for the Collector to arrive at a reasonable figure without first inspecting the property in question. This involves a considerable amount of travel throughout the County three to four times a month and even more in heavy tax collection.

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"Section 150.110: The Collector travels considerably because of the number of businesses throughout the County which continue to go in and out of business."

The general rule relating to the propriety of a public officer receiving compensation was stated in *Nodaway County v. Kidder*, 129 SW2d 857, i.e. 860 (Mo. 1939):

"It is well established that a public officer claiming compensation for official duties performed must point out a statute authorizing such payment."  
[Cases cited there]

I find no statutory authority allowing a collector of a second class county specifically or all public officers of a second class county generally to receive mileage. There is a general statute, Section 49.275, RSMo 1959, providing for mileage to public officers of first class counties but it does not apply to second class counties.

If it were the opinion of this office that mileage was compensation then the rule stated above would apply and no mileage would be allowed as no statute existed granting it to a county collector of a second class county. But, this office had held in several opinions, the most recent of which was addressed to Honorable J. R. Fritz, under date of October 24, 1961, that a reasonable allowance for mileage as a reimbursement for necessary expenses actually incurred in the performance of his official duties was not compensation to an officer. Hence, the rule requiring existence of a statute in order to claim compensation does not apply as mileage for expenses actually incurred is not compensation.

The Supreme Court has not spoken out on this particular matter of allowing mileage to a county collector for expenses actually incurred in the performance of his duties, but in two cases, *Rinehart v. Howell County*, 153 SW2d 381 (Mo. 1949), and *Bradford v. Phelps County*, 210 SW2d 996 (Mo. 1948), the court held that a county prosecuting attorney was entitled to reimbursement from the county court for the expense of necessitous stenographic service, where no statute existed providing for the service nor reimbursing for the outlay. The court distinguished the outlays from income and held in the *Rinehart* case at page 383, that the ". . . statutes relating to fees,

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to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo.'"

The court further held that even though a statute provided stenographic services to prosecutors in larger counties, this did not constitute *expressio unius est exclusio alterius* as to the prosecutors in smaller counties, but rather constituted legislative recognition of the propriety of expenditures for stenographic assistance. The court stated in the Rinehart case at p. 383:

"Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities . . ."

These cases were the basis for two opinions of this office which held that prosecuting attorneys may be reimbursed for actual and necessary traveling expenses incurred in the investigation of crimes. Attorney General's opinions to Honorable James L. Paul, January 23, 1941, and Honorable R. M. Gifford, August 7, 1951, are enclosed.

The statutory situation considered in the opinions regarding travel expenses was the same as to stenographic services, i.e., there were no statutes providing for travel expenses to prosecuting attorneys of the class county involved but statutes did provide for expenses to prosecutors in larger counties. The opinions inferred from the language of Rinehart and Bradford that the courts would view the situation regarding travel expenses in the same manner as stenographic service, i.e., hold that statutes and strict statutory construction necessary for compensation did not relate to outgo and that statutes expressly providing travel expenses for larger counties, rather than excluding it for smaller counties, were

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a showing of legislative recognition of the necessity and validity of such expense, hence the opinions held that the prosecuting attorney may be reimbursed by the county court for actual and necessary traveling expenses incurred in "the necessary fulfillment of the duties of his office."

It is not unreasonable, then, to infer from the cases and opinions of this office that a collector of a second class county may recover actual and necessary travel expenses incurred in the fulfillment of his statutory duties imposed by Sections 139.080 and 150.110, RSMo 1959.

As reimbursement of travel expenses is not compensation, the prohibition on compensation other than the salary provided by Section 52.420 RSMo 1959, is not effective to bar such reimbursement. Further, Section 49.275, RSMo 1959, which provides for travel expenses to county officials of first class counties "reasonably necessary to the efficient performance of his official duties," as the cases indicate, is not to be read as *expressio unius est exclusio alterius*, but rather as indicative of a legislative recognition of the necessity of such provisions to facilitate the expedient and efficient carrying out of official duties.

#### Conclusion

It is the opinion of this office that a collector of a second class county may receive from the county court reimbursement for reasonable travel expenses actually and necessarily incurred in the carrying out of the official duties imposed by Sections 139.080 and 150.110, RSMo 1959.

The foregoing opinion which I hereby approve was prepared by my assistant, Jeremiah D. Finnegan.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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