

PROSECUTING ATTORNEYS:
COUNTY EMPLOYEES:
SALARY FOR PROSECUTING
ATTORNEYS' STENOGRAPHERS:
SALARIES AND FEES:
FEES AND SALARIES:
EMPLOYEES:

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Stenographic and clerical help employed by prosecuting attorneys of third and fourth class counties under the authority of Section 56.245, RSMo Supp. 1967, are employees of the county and not of the prosecuting attorney, and, therefore, such employees are entitled to receive compensation from the county for the period between the date of death of the prosecuting attorney and the date the vacancy of the office was filled by appointment by the Governor during which period there was an acting prosecuting attorney. The person appointed as special prosecutor upon the absence of the prosecutor is not entitled to any remuneration for his services other than that as provided by Section 56.130, RSMo 1959.

OPINION NO. 235

December 12, 1968

Honorable Haskell Holman
State Auditor
State of Missouri
Jefferson City, Missouri 65101



Dear Mr. Holman:

This is in answer to your request for an opinion of this office asking two questions concerning prosecuting attorneys which read as follows:

"When a prosecuting attorney is absent from his office due to illness and the court appoints some person as acting prosecuting attorney and the duly elected official dies and the appointed acting prosecuting attorney continues to serve until the vacancy of the office is filled by appointment by the Governor, the following questions are posed:

"1. Would the stenographic and/or clerical help that had been employed by the duly elected prosecuting attorney be entitled to receive compensation from the county revenue fund for the period between the date of death of the prosecuting attorney and the date the vacancy of the office was filled by appointment by the Governor?

"2. Would the person serving as acting prosecuting attorney be entitled to any remuneration for his services other than that as provided by Section 56.130, RSMo., 1959?"

Honorable Haskell Holman

You have further informed us that your question relates to third and fourth class counties.

If the stenographic and clerical help are employees of the county who can perform their duties when an acting prosecuting attorney has been appointed, then the answer to your first question is clearly yes.

The controlling statute, enacted in 1961, is Section 56.245, RSMo Supp. 1967, which reads as follows:

"The prosecuting attorney in counties of the third and fourth class may employ such stenographic and clerical help as may be necessary for the efficient operation of his office. The salary of any stenographer or clerk so employed shall be fixed by the prosecuting attorney with the approval of the county court to be paid by the county but such salary shall not exceed four thousand dollars per year in third class counties and one thousand eight hundred dollars per year in fourth class counties."

Prior to the enactment of Section 56.245, supra, in 1961, there was no statutory provision for the employment of stenographers and clerical help by prosecuting attorneys in third and fourth class counties, nor for the payment of salaries by the county. Thus, prior to 1961 it was held that stenographers were employees of the prosecuting attorneys in third and fourth class counties and not employees of the county. Such employees, therefore, were not paid by the county but by their employer, the prosecuting attorney. The prosecuting attorney could, however, be reimbursed by the county for payment of such salaries as being necessary expenses of performing the duties of the office. *Rinehart v. Howell County*, 348 Mo. 421, 153 S.W.2d 381 (1941); *Miller v. Webster County, Mo.*, 228 S.W.2d 706 (1950). The court noted in both cases that the General Assembly had authorized and established salaries for stenographic services to prosecuting attorneys in larger counties indicating that in such instances stenographers are employees of the county.

The enactment of Section 56.245, supra, in 1961, placed third and fourth class counties in the same category as the larger counties referred to by the court. Section 56.245 states that the salary of any stenographer or clerk employed by the prosecuting attorney in third and fourth class counties is "to be paid by the county." It is our opinion that stenographic and clerical help employed by prosecuting attorneys of third and fourth class counties under the authority of Section 56.245 are employees of the county and not of the prosecuting

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attorney. It follows, therefore, that in the instant situation the stenographic and clerical help that had been employed are entitled to receive compensation from the county for the period between the date of death of the prosecuting attorney and the date the vacancy of the office was filled by appointment by the Governor.

In answer to your second question, we are enclosing copies of Attorney General's Opinion No. 52, dated January 25, 1952, issued to Mr. Walter R. Lethem, Jr., and Opinion No. 412, dated December 19, 1967, issued to the Honorable James L. Paul. We know of no statute providing remuneration for the services of the special prosecutor other than that provided by Section 56.130, supra, and therefore conclude under the enclosed opinions that there is no other remuneration.

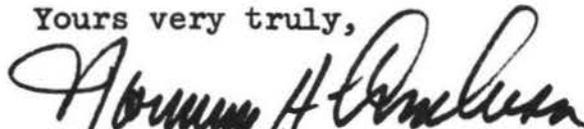
CONCLUSION

It is the opinion of this office that stenographic and clerical help employed by prosecuting attorneys of third and fourth class counties under the authority of Section 56.245, RSMo Supp. 1967, are employees of the county and not of the prosecuting attorney, and, therefore, such employees are entitled to receive compensation from the county for the period between the date of death of the prosecuting attorney and the date the vacancy of the office was filled by appointment by the Governor during which period there was an acting prosecuting attorney.

It is our further opinion that the person appointed as special prosecutor upon the absence of the prosecutor is not entitled to any remuneration for his services other than that as provided by Section 56.130, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enc. Op. No. 52, 1-25-52, Lethem
Op. No. 412, 12-19-67, Paul