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Opinion No. 397-1968
Answered by letter
Chitwood

October 24, 1968

Honorable James C. Skaggs
State Representative
District 129
Ellington, Missouri

Dear Representative Skaggs:

This office is in receipt of your request for a legal opinion upon three inquiries concerning the prosecuting attorney of a fourth class county. The first inquiry reads as follows:

> "Is it legal for the Prosecuting Attorney to have his office at some other place than at the County Seat?"

Section 56.010, RSMo. Cum. Supp. 1967, provides for the election and qualifications required of prosecuting attorneys and reads as follows:

> "At the general election to be held in the year A.D. 1880, and every two years thereafter, there shall be elected in each county of this state a prosecuting attorney, who shall be a person learned in the law, duly licensed to practice as an attorney at law in this state, and enrolled as such, at least twenty-one years of age, and who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office and shall hold his office for two years, and until his successor is elected, commissioned and qualified; except that at the general election in 1968, and every four years thereafter, in counties of the first class not having a charter form of government, the prosecuting attorney shall be elected for a term of four years."

The above quoted section nor any others of Chapter 56, RSMo. 1959, on prosecuting attorneys, require him to keep his office at the county seat. Consequently he may legally keep his office at any location within the county in which he was elected. Our answer to your first inquiry is in the affirmative.

Your second inquiry reads as follows:

> "If the attorney moves his office out of office provided by the County Court, is the Court obligated to continue to pay the clerical help as agreed?"

Section 56.245, RSMo. Cum. Supp. 1967, is in regard to the employment and compensation of stenographic and clerical help of prosecuting attorneys of third and fourth class counties, and is of course applicable to the fourth class county of Reynolds. Said section 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."

From Section 56.245, supra, employment of stenographic or clerical help of the prosecuting attorney of a third or fourth class county is authorized only in these instances "as may be necessary for the efficient operation of his office". Within the statutory limitation, the prosecuting attorney fixes the salary of his help, with the "approval", i.e., order of record by the county court approving the appointment, and the budgeting of sufficient funds to pay the salaries of such help. When the county court has met this legal requirement, the need for such help continues and funds for salaries are available, the county court is unauthorized to set aside its order of approval and transfer any unused balance of the budgeted salary funds to a different fund for other uses. In effect, such was the holding of this office in our opinion written for Honorable Virgil Conkling, Prosecuting Attorney of Wayne County, Missouri, on November 6, 1964, a copy of which is enclosed.

While the opinion request does not state the facts in detail, but if, as appears from what has been stated, the prosecuting attorney of Reynolds County employed stenographic and

clerical help, fixed the salaries for same, and his action was approved by the county court of Reynolds County, by appropriate order, budgeting of salary funds, all in compliance with Section 56.245 supra, and the need for such help continues, as well as availably salary funds, then the county court has the obligation to pay the prosecutor's stenographic and clerical help, regardless of the fact he has removed his office from the offices provided for his use by the court. Under these circumstances, our answer to your second inquiry is in the affirmative.

Your third inquiry reads as follows:

> "Would the court be obligated to pay office rent for Prosecuting Attorney in some other town if they had provided office space in the Courthouse?"

The factual situation involved in the third inquiry has been clarified in a conversation we had with you subsequent to the date of the opinion request. Our latest information of the facts, from such conversation, is that the prosecuting attorney has recently removed his office from the rooms in the county courthouse provided for his use to a building located in the town of Ellington, in the same county. Such building was purchased by the prosecuting attorney, where he has his private law office, but proposes to charge the county the sum of $50.00 per month for the same office space as office of the prosecuting attorney of Reynolds County.

In this connection, we call attention to our opinion of this office written for Honorable William Hoertel, Prosecuting Attorney of Phelps County, Missouri, on June 10, 1963. One of the questions discussed and answered in the opinion was whether or not the county court was legally obligated to pay $50.00 per month to rent and equip a suitable office for the county surveyor in the basement of his home.

It was concluded in said opinion to be the duty of the county court of a third class county to furnish and equip a suitable office for the surveyor, but the court and not the surveyor determines the adequacy of the office provided under Section 49.510, RSMo. 1959.

Although the above mentioned opinion involved a third class county, the statutes referred to therein are also applicable to fourth class counties, such as Reynolds, and a copy of same is enclosed for your consideration. Applying the principles of law discussed in said opinion to the circumstances involved in the third inquiry, it is believed to be the duty of the Reynolds County Court to provide and equip adequate office space for the prosecuting attorney of that county, and this is particularly true under Section 49.510, RSMo. 1959. However, the adequacy of the office space

and equipment to be provided at county expense is within the determination of the county court and not of the prosecuting attorney.

If the court should determine that the office space and any equipment provided for the prosecuting attorney in the county courthouse is adequate, they would be justified in refusing to pay office rent for the prosecutor's office at some other location and there would be no legal obligation on the court to make such rent payments. On the other hand, if the court were to decide the office space and equipment provided for the prosecuting attorney in the courthouse to be inadequate, and should find the new office of the prosecuting attorney to be adequate, then the court might legally pay the rent upon such new office.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Encs: Opinion No. 346, 11/6/64, Conkling
Opinion No. 101, 6/10/63, Hoertel