

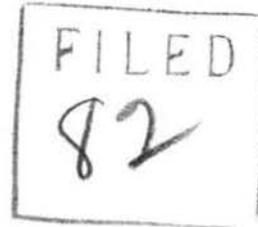
ADITORS:
SALARIES:
ADDITIONAL COMPENSATION:

The right of the County Auditor to payment of the additional compensation provided by Section 55.097, RSMo Cum. Supp., is conditioned upon the actual performance of the duties imposed by Section 55.175, RSMo Supp. 1967, including the making of an annual

audit of the accounts and records of the county health center, county planning and zoning commission and the county building commission. In counties where these facilities do not exist, the auditor cannot meet the conditions imposed by the statute and therefore cannot acquire a right to payment of the additional compensation provided in Section 55.097.

OPINION NO. 82

March 4, 1969



Honorable Frank Conley
Boone County Prosecuting Attorney
Boone County Courthouse
Columbia, Missouri 65201

Dear Mr. Conley:

This is in response to your request for an opinion as follows:

"On January 1, 1969, Boone County will become a second class County and eligible for appointment of a County Auditor. Section 55.090 RS Mo., 1959, provides that the sum of \$5,000.00 for his performances. Sections 55.095 and 55.161 RS Mo., 1959, provide that the County Auditor shall be paid an additional \$1,000.00 for his performance of certain additional duties.

"Section 55.097 RS Mo., 1959, provides that the Auditor shall be paid an additional \$2,000.00 for the performance of certain additional duties set forth in 55.175 RS Mo., 1959, which involve auditing the County Health Center, the Planning and Zoning Commission and the Planning and Building Commission. Boone County does not have a County Health Center, Planning and Zoning Commission or Planning and Building Commission, hence, there will be no additional duties in this area to be performed at this time.

Honorable Frank Conley -

"In view of the fact that the particular agencies to be audited under 55.175 RS Mo., 1959, do not now exist within this County, is the County Auditor entitled to the additional \$2,000.00 compensation?"

The additional compensation to which you refer is provided in Section 55.097, RSMo Cum. Supp. 1967, as follows:

"For the performance of the duties imposed by section 55.175, the county auditor shall receive, in addition to all other compensation provided by law, two thousand dollars per annum."

Section 55.175, RSMo Cum. Supp. 1967, provides:

"The county auditor in counties of the second class shall make an annual audit of the accounts and records of the county health center, county planning and zoning commission and the county building commission, and report the condition of the accounts to the county court."

The question presented is whether the right to the additional compensation provided by Section 55.097 arises from an amount fixed by the General Assembly as salary or compensation incidental to the Office of the County Auditor, or whether it arises from the rendition of services through the performance of the duties specified in the statute. We are, therefore, confronted with a problem in statutory construction.

The fundamental purpose in statutory construction is to ascertain and give effect to the legislative intent. In construing a statute and arriving at the intent thereof, it is proper and helpful to consider its historical development. Kansas City v. Travelers Insurance Company, 184 S.W.2d 874.

One of the accepted canons of statutory construction permits and often requires an examination of the historical background of the legislation, including changes therein and related statutes. State v. Atterbury, 270 S.W.2d 399. Section 55.095, RSMo 1959, is a related statute, inasmuch as it also provides additional compensation for additional duties by the County Auditor, as follows:

"For the additional duties provided in section 55.161, the county auditor shall receive, in addition to the compensation provided in

Honorable Frank Conley -

section 55.090, the sum of one thousand dollars, payable monthly in equal installments out of the general revenue fund of the county by warrants drawn on the county treasurer."

An examination of the historical development of Sections 55.095 and 55.097 discloses how the policy of the General Assembly with respect to additional compensation for additional duties by the Auditor in Class two counties has been changed or modified.

Section 55.095 was first enacted in 1951 and, at that time, it included the following provision at the end of that section:

"... provided however, that the county auditor for all services rendered shall not receive as total compensation in excess of five thousand dollars (\$5,000.00)."

In 1959, the General Assembly repealed Section 55.095 and re-enacted it with the foregoing provision deleted (L. 1959, S.B. 196, Section 1). By such action the General Assembly expressed a policy of not only removing a condition it had previously placed on the right of the Auditor to receive additional compensation, but it also fixed the additional compensation authorized by Section 55.095 as a part of the annual salary provided for the Office of County Auditor, and permanently attached it to that office.

A different policy was expressed by the General Assembly in the action taken after the decision of State v. Carpenter, 388 S.W.2d 823, to which you called attention in your opinion request. This decision was handed down March 8, 1965, while Sections 55.097 and 55.175, which were paragraphs 1 and 2 of S.B. 122 in the Seventy-Third General Assembly, were approved July 9, 1965.

In State v. Carpenter the Court held that the superintendent of the county schools was entitled to additional compensation for the duties of supervising transportation, even though no such duties existed in the county. In reaching that conclusion, the Court pointed out that "the sums here involved are salary" and "the fact that he does not perform all or any of its duties will not affect the right to the salary attached thereto unless the statute otherwise provides". The Court also stated "the General Assembly could have attached conditions to the superintendent's right to receive additional compensation, but it did not do so".

The Court, therefore, makes a distinction between statutes from which the right to additional compensation arises as an incident to the office, and statutes from which the right to additional compensation arises from the rendition of services.

Honorable Frank Conley -

Following, and apparently prompted by this decision, the General Assembly enacted Section 55.097 and in this section attached a condition to the Auditor's right to receive additional compensation, this condition being "for the performance of the duties imposed by Section 55.175". The attachment of this condition is in harmony with State v. Carpenter and discloses a clear legislative intent that the right to additional compensation is dependent upon performance of the additional duties.

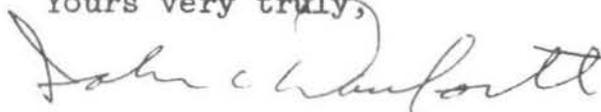
The duties imposed by Section 55.175 are specific. Where specific compensation is given by law to a public officer for the performance of specific duties, as in Section 55.097, it would seem he is not entitled to compensation unless he performs the duties. In this instance, having performed no additional duties and having rendered no additional services to the county, there is nothing upon which he can predicate a right to additional compensation.

CONCLUSION

Therefore, it is the opinion of this office that the right of the County Auditor to payment of the additional compensation provided by Section 55.097, RSMo Cum. Supp. is conditioned upon the actual performance of the duties imposed by Section 55.175, RSMo Supp. 1967, including the making of an annual audit of the accounts and records of the county health center, county planning and zoning commission and the county building commission. In counties where these facilities do not exist, the auditor cannot meet the conditions imposed by the statute and therefore cannot acquire a right to payment of the additional compensation provided in Section 55.097.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH
Attorney General