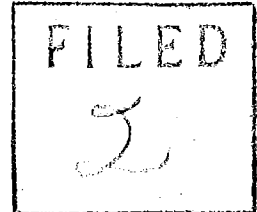


MAGISTRATES:
PROSECUTING
ATTORNEYS:
COUNTY COURTS:

Judge of probate court in counties of less than 30,000 inhabitants is ex officio judge of magistrate court. Additional clerks, deputy clerks and employees may be provided for magistrate court by county court, where necessity exists, their salaries to be paid by county. Stenographic services for probate judge are paid for by the county out of Class 4 as provided in Budget Act. Clerk of magistrate court may receive pay for stenographic work done for probate judge. Clerk of magistrate court may act as stenographer for probate judge, and will be paid for such services in addition to his salary as clerk of magistrate court. Stenographic services for prosecuting attorney may be paid for by county out of Class 4 as provided in Budget Act.

December 11, 1946



Andrew County Court
Savannah, Missouri

Gentlemen:

Reference is made to your letter of recent date, requesting an official opinion of this department, and reading as follows:

The County Court of Andrew County, Missouri, in anticipation of questions that will arise over salaries and fees of County officers in Andrew County, Missouri, ask opinions on the following subjects:

"1. What is the salary of the Magistrate of Andrew County, by whom and how is he paid?

"2. Does the office of the Probate Judge and Magistrate merge or is he ex officio officer of either office, or are they separate and distinct offices?

"3. What is the highest amount that can be paid for deputy hire of magistrate, by whom is this salary set and paid?

"4. Up to what amount, if any, is the County compelled to pay for services of a stenographer of the Probate Judge and if any, out of what budget fund is this to be paid?

"5. Can a Deputy Magistrate receive salary

or compensation for services for stenographic work done for the Probate Court, payable from the County Treasurer, in addition to salary as deputy Magistrate?

"6. Is there any reason why a deputy magistrate cannot act as a stenographer for the Probate Court and draw compensation for such work and at the same time draw a monthly salary as a deputy magistrate?

"Our proposition is this: J. W. Mitchell has been elected Probate Judge and Magistrate of Andrew County at the last election. He is now asking the Court to pay in addition to \$125.00 per month, salary of deputy Magistrate, the further sum of \$25.00 per month, anticipated amount for stenographic services, and we are in a quandary to know what legal right we would have to pay this \$25.00 stenographic service for the Probate Court, stenographic service, if so, is this amount payable to the Probate Judge or to the person performing the services.

"Also, we would like to know if we are to pay stenographic services for the office of the Prosecuting Attorney, if so, how much and from what fund?"

We note that Andrew County, in 1940, had a population of 13,015, and in 1944 had an assessed valuation of \$18,363,835. Section 17 of Senate Bill No. 207 of the 63rd General Assembly provides, in part, as follows:

"The salaries of all magistrates shall be paid by the state, except that the state shall not pay the salaries of additional magistrates whose offices are created by order of the circuit court as provided for in Article V, Section 18 of the Constitution; but the districts assigned to such additional magistrates shall be designated as 'additional magistrate districts' and the salaries of such magistrates shall be paid by the county. The annual salaries of magistrates shall be as follows:

" * * * in all counties now or hereafter having a population of more than 11,000 inhabitants but not more than 17,000 inhabitants, with an assessed valuation of more than \$11,000,000 the sum of \$3600; * * *"

Therefore, the salary of the magistrate of Andrew County will be \$3600 per year.

Section 18 of Article V of the Constitution of Missouri provides, in part, as follows:

"There shall be a magistrate court in each county. In counties of 30,000 inhabitants, or less, the probate judge shall be judge of the magistrate court. * * *"

Section 1 of Senate Bill No. 207 provides, in part, as follows:

"Magistrates, as herein provided for, shall be elected at the general election to be held in 1946, and every four years thereafter, and shall hold their offices for four years, or until their successors are elected or appointed, commissioned and qualified: Provided, however, in counties of 30,000 inhabitants or less the probate judge shall be judge of the magistrate court. * * *"

"Ex officio" is defined in Ballentine's Law Dictionary as "from or by virtue of the office."

It is clear, from the constitutional and statutory provisions above quoted, that the magistrate holds the office of magistrate by virtue of the fact that he is probate judge, and we, therefore, hold that the probate judge is ex officio judge of the magistrate court.

Section 21 of Senate Bill No. 207 provides, in part, as follows:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and

fix their salaries at such sum as in his discretion may seem proper. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this act for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be required. * * * "

Section 22 of Senate Bill No. 207 provides, in part, as follows:

"Salaries of clerks, deputy clerks and employees provided for in the last preceding section shall be paid by the state within the limits herein provided upon requisition filed by the judge of the magistrate court; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in Section 1 of this act shall be paid by the county as the salaries of such magistrates are required to be paid. The total amount that may be paid by the state in any one year for such clerks, deputy clerks and employees of the magistrate courts in the different counties shall not exceed the following sums:

"* * * in all counties now or hereafter having a population of more than 11,000 inhabitants but not more than 17,000 inhabitants, with an assessed valuation of more than \$11,000,000, the sum of \$1500; * * * "

The salaries of the clerks, deputy clerks and employees of the magistrate court are fixed by the magistrate. The salaries of those clerks, deputy clerks and employees of the magistrate court of Andrew County who are paid by the state cannot exceed a total of \$1500 annually. The county court may provide additional clerks, deputy clerks or employees, if the need exists in the county, and the salaries of such additional clerks, deputy clerks and employees are paid by the county.

In this connection, we wish to call your attention to the fact that there is no such office as deputy magistrate, but that the magistrate may hire a clerk, deputy clerks or other employees.

In connection with your question regarding the amount, if any, that the county is compelled to pay for services of a stenographer of the probate judge, we are enclosing a copy of an opinion written under date of February 19, 1945, to the Honorable Forrest Smith, State Auditor, which we believe answers your question in this regard. The amount to be paid for such stenographic services should come out of Class 4 expenses, as provided in Section 10914, R. S. Mo. 1939.

In regard to your question relative to the services of a "deputy magistrate," by which we presume you mean a clerk, deputy clerk or other employee of the magistrate court, acting as stenographer for the probate court, your attention is directed to Section 22 of Senate Bill No. 207, which provides, in part, as follows:

" * * * When the judge of the probate court is also judge of the magistrate court, such judge, in his discretion, may designate one or more of such clerks, deputy clerks or employees as clerks, deputies or employees in the probate court."

With regard to the question as to the payment to the prosecuting attorney for moneys expended by him for stenographic services, your attention is directed to the case of Rinehart v. Howell County, 348 Mo. 421, 153 S. W. (2d) 381, parts of which are quoted in the opinion rendered to Honorable Forrest Smith, a copy of which is enclosed, and in which the direct question you have asked in your letter is answered. Under the ruling in Rinehart v. Howell County, you will see that it is a matter of fact to be determined as to what payment should be made to reimburse the prosecuting attorney for his expenses with regard to stenographic services. This money should also be paid from Class 4, as provided in Section 10914, R. S. Mo. 1939.

CONCLUSION

It is the opinion of this department:

(1) The salary of the magistrate of Andrew County is \$3600. Said magistrate is paid by the state.

(2) The probate judge in counties of less than 30,000 inhabitants is ex officio judge of the magistrate court.

(3) The salaries of clerks, deputy clerks and employees of the magistrate court are fixed by the magistrate. The salaries of the clerks, deputy clerks and employees who are paid by the state cannot exceed a total of \$1500 per year. The county court may provide for additional clerks, deputy clerks and employees for the magistrate court, where the need exists, and the salaries of such additional clerks, deputy clerks and employees are paid by the county.

(4) Stenographic services for the probate judge, if necessary for the proper performance of the duties of such probate judge, in a reasonable amount, may be provided by the county, or the county may reimburse such probate judge for payments he has made for stenographic services. These payments should be made out of Class 4 as provided in the Budget Act.

(5) The clerk, or deputy clerk, of a magistrate court may be compensated by the county for stenographic work done for the probate judge, or the probate judge may be reimbursed for payments he has made to such clerk, or deputy clerk, for stenographic services performed by such clerk for the probate judge.

(6) The clerk, or deputy clerk, of the magistrate court may also act as stenographer for the probate judge, and will draw his salary as clerk, or deputy clerk, of the magistrate court and be paid by the county for such stenographic services, or the probate judge may be reimbursed for payments he has made to such clerk, or deputy clerk, for stenographic services for the probate judge.

(7) One who acts as stenographer for the prosecuting attorney may be paid by the county, or the prosecuting attorney may be reimbursed in a reasonable amount for moneys

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paid by him for stenographic services. This payment should be made out of Class 4 as provided in the Budget Act.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR