

MILEAGE OF CIRCUIT JUDGES:



On and after July 3, 1958, at which time Senate Bill 14, enacted by the 69th General Assembly in special session, became effective, judges of the circuit court should be reimbursed out of the state treasury for all reasonable and necessary travel expense actually incurred by them in such travel.

August 12, 1958

Honorable Claude E. Curtis  
Circuit Judge  
19th Judicial Circuit  
Lebanon, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"In our Judicial Circuit, the Nineteenth, which consists of five counties, it has been my practice to alternate the driving with our court reporter when attending court in a county away from my place of residence. He drives his car on one trip and I drive mine on the next. When he rides with me he does not charge any mileage to the State or County and, of course, I do not charge him anything for transportation. When I ride with him I do not pay him anything for transportation.

"Under the present law, as found in Section 478.017 RSMo. 1949, and pursuant to your opinion that said Act provides for a flat mileage allowance, I have been charging the State 10¢ per mile when I ride with our court reporter.

"Senate Bill 14, passed by the 69th General Assembly, which repeals Section 478.017, and which will become effective July 3, 1958, provides

"'Each judge of the circuit court whose circuit consists of more than one county, in addition to the salary provided in Section 478.013, shall be reimbursed out of the State Treasury for all reasonable and necessary travel and subsistence expenses incurred in holding of all terms of court at any place in his county or circuit other than the place of his residence.'

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"As I understand the law, we would be entitled to drive separately and each of us could charge 7¢ per mile for use of our cars, but for the sake of convenience and to save costs to the State and County we prefer to ride together.

"Will you please give me your opinion as to whether I will be entitled to any mileage when I ride with our court reporter under the same arrangement as stated above?

"Very truly yours,

S/ Claude E. Curtis

"P.S. Will you also please give me your opinion as to what amount can be properly charged per mile for reasonable travel expenses when using my own car?"

Sections 478.017 and 478.020 of Senate Bill No. 14 were enacted by the Second Extra Session of the 69th General Assembly. These sections were enacted without an emergency clause and therefore became effective 90 days after the adjournment of the Legislature. The House Journal of April 4, 1958, shows that on that date the Legislature adjourned sine die. Therefore Senate Bill No. 14 became effective on July 3, 1958. These sections read:

"478.017. Each judge of a judicial circuit composed of a single county which now has or may hereafter have less than two hundred thousand inhabitants and in which circuit court is held in more than one place and each judge of the circuit court whose circuit consists of more than one county, in addition to the salary provided in section 478.013 shall be reimbursed out of the state treasury for all reasonable and necessary travel and subsistence expenses incurred in holding of all terms of court at any place in his county or circuit other than the place of his residence, and such sum of money for said expenses shall be paid out of the state treasury in monthly installments in the same manner as salaries of such judges are paid.

"478.020. Each of the judges herein mentioned, when temporarily serving, transferred or assigned as a judge of a court other than

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the one to which appointed or elected, said court to which temporarily assigned or transferred being held in a circuit other than the circuit in which such judge resides, in addition to the salary and expense money herein provided, shall be reimbursed from the state treasury for all reasonable and necessary travel and subsistence expenses incurred in connection with his service, assignment or transfer to the other court."

The portion of this bill which we must construe is the meaning of "all reasonable and necessary travel and subsistence expenses incurred \* \* \*."

It would seem to us that Senate Bill 14, supra, was a conscious attempt by the Legislature to get away from the "flat allowance" system provided by repealed Section 478.017, RSMo 1949, supra, and to substitute an actual expense plan. We cannot otherwise construe the meaning of the word "incurred."

In the case of Maryland Casualty Company vs. Thomas, 289 SW2d 652, at l.c. 655, the Court of Civil Appeals of Texas, in an opinion rendered in 1956, gave extensive attention to the meaning of this word. It stated:

"\* \* \*Under the record and according to the contentions made by the parties, the determination of this appeal depends upon the meaning of the word 'incurred' as used by the language found in the policy.

"Webster's New International Dictionary says, 'Incur' means to 'render liable or subject to; to become liable or subject to; to bring down upon oneself as to incur debt, danger, displeasure, penalty, etc.' The New Century Dictionary says that the word 'incur' means to 'become liable or subject to through one's own action; bring upon oneself: as to incur liabilities or penalties.'

"[1, 2] In our opinion, the word in question should be given its plain and ordinary meaning when used in an insurance contract, just as the word 'insurability' or any other commonly used word must be so used. 24 Tex. Jur. 939-940, Sec. 188.

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'The word "incur" in statute permitting deduction of expenses incurred during taxable year must be given ordinary and usual meaning.' 20 Words & Phrases, 626.

'The word "incur" means brought on.' 20 Words & Phrases, 624.

"Incurred" means to become liable for, or subject to, to render liable or subject to; "incur" means something beyond contract, something not embraced in the word "debt." \* \* \* In actions for injuries, recovery may be had for amounts shown to have been expended or incurred for hospital bills and medical treatment, provided such damages are properly pleaded; "incurred" meaning to become liable for. \* \* \* "Incurred" means to become liable for, so that, as used in a guaranty that "we hold ourselves responsible for any costs and damages which may be incurred by said D.," it means such costs and damages as he shall become liable for, and not necessarily that such liability has been paid.' 20 Words & Phrases, 623.

"The last part of the above quotation shown appellant cites as authority in support of its contentions here made. In our opinion, it does not support appellant's contentions here made but supports the contrary position taken by appellee. It will be noted that the authority there cited and relied upon by appellant defines the word 'incurred' then illustrates its meaning and finally says: 'It means such costs and damages as he shall become liable for, and not necessarily that such liability has been paid.' Appellant also says 'incurred,' when applicable to medical expenses paid out or incurred, means to become liable for. Appellant contends in effect that the use of the phrase 'expenses incurred' as used in its policy means expenses for services that have already been 'rendered or performed within one year from the date the accident occurred.' Such a contention is not supported by appellant's authorities cited. Under all of the authorities cited, we think appellant became liable to

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appellee for 'all reasonable expenses \* \* \* caused by the accident' on the day it occurred. A debt has been incurred when liability attaches; a contingency promise to pay has been incurred when the contingency upon which the payment depends occurs. It was then known that appellant would be liable for Kim's injuries only to the extent of a total of \$1000 and no more. However, in our opinion, appellant was liable for all reasonable expenses not to exceed \$1000 for the repairs of Kim's injuries caused by the accident whether the services correcting them have or have not been performed within one year from the date of the accident."

From the above, and from Senate Bill 14, we can only conclude that the term "travel expenses incurred" means just what it says. Thus, if you go by train or bus from your residence to a point in your circuit on court business, you could recover from the state the actual cost of such round-trip tickets, less the amount of federal tax, which a state employee is not required to pay. Paragraph C of Rule 7 of "Regulations" of the Department of Revenue, Office of Comptroller, reads:

"Tax exemption certificates for transportation shall be used in all cases in which the State is exempt from payment of federal taxes. State officials and employees shall be required to obtain such exemption from the public carrier and shall not be entitled to reimbursement for such charges on their expense accounts. A copy of the exemption certificate should in all cases be attached to the expense account or requisition."

If, instead, you rode with another person and he charged you, let us say \$5 for the round trip, and if such charge was "reasonable," you could recover \$5 from the state for such trip. On the other hand, if the party with whom you rode did not charge you anything for riding, then you would not have "incurred" any expense and so could not recover anything from the state.

If in making this trip, you drove your own motor vehicle, then you would be able to recover from the state the expense incurred.

It would seem to us that from the wording of Section 478.017, supra, that the circuit judge is placed in the same position as are other employees of the state who are entitled to reasonable and necessary travel and subsistence expenses. Under the authority

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given him by Section 33.090, RSMo 1949, the state comptroller has enacted Rule 9 which reads:

"Allowance for travel by privately owned automobiles will be allowed at a rate not to exceed seven cents per mile, unless State laws make other provisions. No other expense will be allowed. Only the owner of the automobile receives mileage. (That is, if two or more people travel in the same automobile only 7¢ per mile is paid to one employee.) Mileage allowance outside the State of Missouri is not reimbursable unless travel by such means is advantageous to the State."

#### CONCLUSION

It is the opinion of this department that on and after July 3, 1958, at which time Senate Bill 14, enacted by the 69th General Assembly in special session, became effective, that judges of the circuit court should be reimbursed out of the state treasury for all reasonable and necessary travel expense actually incurred by them in such travel.

This opinion which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

HPW:gm