

PROSECUTING ATTORNEYS:

Prosecuting Attorney not entitled to a compensation in addition to salary for work done in connection with case in which County was party.

11314-15-16-18-11783

June 20, 1933.

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Mr. T. J. Harper,  
Prosecuting Attorney,  
Galena, Missouri.

Dear Sir:

We are acknowledging receipt of your inquiry of June 9, 1933, as follows:

"As Prosecuting Attorney for Stone County, Missouri, I ask your opinion of the questions based on following facts:

Statement.

J. William Cook was Prosecuting Attorney for Stone County during the years 1931 and 1932. He represented Stone County in the case of State Highway Commission vs Vasa Lockhart Dorris et. al. in a condemnation case involving land located in Crane, Missouri, desired by the plaintiff on Highway 13. The case was tried in Springfield in 1932 on a change of venue from Stone County. It developed before the trial that plaintiff had been furnished the following witnesses: Bill Baker, age about 75 years, a retired carpenter, living in Crane; Bud Rea, age about 75 years, a farmer living about 4 miles from Crane with no equity in his farm and Wade Hilton, an operator of a curb filling station, age about 45, living in Crane; that the defendants had six or eight of the most substantial farmers and business men in the community, who each would testify and did that the damage exceeded benefits by approximately \$3000.00; that two of the plaintiff's witnesses could not qualify and one would and did testify that the damages exceeded benefits by \$800.00. Popular feeling was with the defendants, who were raised on the land sought to be condemned, were widows, well liked and very active in their own interests. Under such circumstances, Cook states that he realized that defendants would obtain a very substantial judgment on their exceptions, if plaintiff could not get more suitable testimony. Without any order from the County Court or from the plaintiff, Cook spent the major portion of two weeks trying to get evidence, but was handicapped by local feeling and by the fear of local people to participate as witnesses. He finally obtained three witnesses, one of whom testified unwillingly, of substantial standing who could qualify. Defendants recovered judgment for \$1000.00,

less than the amount allowed by the commissioners appointed in the case.

Questions.

1st. Is J. William Cook entitled to reasonable compensation for his work and time in obtaining needed witnesses as outlined above?

2nd. If so, is the bill for \$100.00 reasonable?

3rd. Has the Stone County Court the legal right to approve the attached bill, or allow same out of general revenue?"

Section 11314 R. S. Mo. 1929, provides the amount of salary Prosecuting Attorneys of the various Counties shall receive in payment for their services and how the population of the various counties is ascertained for the purpose of fixing salaries.

Section 11783 R. S. Mo. 1929, provides that certain fees shall be allowed to the Prosecuting Attorneys.

Section 11315 R. S. Mo. 1929, provides that it shall be the duty of the Prosecuting Attorneys to charge upon behalf of the county every fee that accrues to his office, and requires him at the end of each month to pay in to the County Treasury all such money collected by him as fees.

It is obvious from the foregoing Statutes that the Prosecuting Attorney no longer receives fees, but is now on a salary basis. Fees that are collected by him are required to be turned over by him to the County Treasury. However, if there could be any doubt about this proposition, Section 11783 R. S. Mo. 1929, makes no provision for the payment of any fee under the circumstances covered by your inquiry. If the work performed by the Prosecuting Attorney, about which you inquire, is a duty imposed upon him as a Prosecuting Attorney, then the salary which he receives as Prosecuting Attorney is his full compensation for his duties as Prosecuting Attorney, except where provided otherwise.

In Hill v. Butler County, 195 Mo. 511, the Prosecuting Attorney sought to recover a fee for attending and representing the State in a preliminary examination before a justice of the Peace of his county in a felony case. He presented his bill for \$90.00. The court held that there was no question of quantum meruit in the case; if the officer is entitled to the fee claimed he would have to point it out in the Statutes. At that time the Statute provided for a prescribed salary graded according to population and contained the addition<sup>al</sup> provision, to-wit: "And said Prosecuting Attorney shall also receive for his services in the Circuit Court and other Courts, such fees as allowed by law." The Court, at page 515, says:

"Thus the Legislature has provided that the officer is to

be compensated for his services in two ways, by salary and by fees, both as, and only as, expressly prescribed by Statute. If the law imposes on him a certain duty, but prescribes no particular fee for its performance, he cannot say that it imposes on him a duty for which he receives no compensation, because the statute says that his salary is given him in payment of his services. We do not mean that the salary is given as compensation for only such services as for which no particular fee is prescribed, for that is not the meaning of the statute; the salary is in payment of all his services, with the addition that for certain services particular fees are also given, and there may be other services for which no particular fee is given, but which are fully compensated by the salary."

In that case it was held that he was not entitled to recover on the basis of quantum meruit; that the statute prescribes certain fees in addition to his salary and unless the service performed was such as was to be compensated by a specific fee, that his compensation, therefor would be the salary which he receives. Now the Prosecuting Attorneys are on salaries and the fees collected go to the County. The services which they perform now under the statute are compensated by the salary they receive.

The general rule is that when an officer seeks to collect a fee for services he has performed as such officer, before such fee will be allowed he must be able to place his finger upon the section of the Statute authorizing the fee as claimed.

In *Gannon v. Lafayette County*, 78 Mo. 675, 676, the court says:

"The right of a public officer to fees is derived from the Statutes. He is entitled to no fees for services he may perform, as such officer, unless the Statute gives it. When the Statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services."

In *State v. Wofford*, 116 Mo. 320, 323, the court again said:

"It is a well settled law that no officer is entitled to fees of any kind unless provided for by Statute, and that the law conferring such right must be strictly construed because of statutory origin and right. (Citations omitted)."

Again in *State ex rel. v. Brown*, 148 Mo. 401, 406, the court, in speaking on the same subject, says:

"It is well settled that no officer is entitled to fees of any kind unless provided for by Statute, and being

solely of statutory right, the statute allowing the same must be strictly construed."

Section 11316 R. S. No. 1929, among other things, provides that:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. \* \* \*"

Section 11318 R. S. No. 1929, provides:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties where there may be a county counselor. \* \* \*"

It is our opinion that the prosecuting attorney in prosecuting a suit for and on behalf of the county was performing a duty which the statute placed upon him as prosecuting attorney. The proper presentation of evidence in the case which he was handling is as much the duty of the prosecuting attorney as the proper presentation of the law. If he had not provided sufficient evidence his salary would not have been reduced. Since he did produce additional evidence, that is no basis for additional compensation. The failure to produce competent testimony might have subjected him to criticism, and the fact that he did produce competent testimony would indicate that he was conscientiously trying to discharge the duties of his office. Neither circumstance, however, in our opinion, would tend to increase or decrease his compensation because the statutes do not make provision for such a contingency. at he did was done without an order of the County Court and was done in his official capacity as a prosecuting attorney of Stone County in carrying out the duties imposed upon him by statute.

From the foregoing it is, therefore, our opinion that the former prosecuting attorney was not entitled to additional compensation over and above what he received as salary of prosecuting

Mr. T. J. Harper,

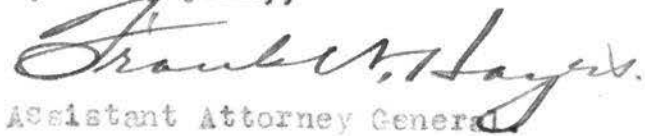
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June 20, 1933.

attorney for the services outlined in your inquiry. However, he is entitled to reimbursement for actual expenses in following the change of venue.

Having decided that the prosecuting attorney is not entitled to additional compensation, it is not necessary to discuss the other two inquiries.

Very truly yours,

  
Assistant Attorney General

APPROVED:

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Attorney General.

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