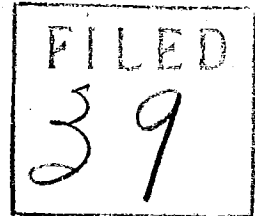


MAGISTRATE COURTS: Magistrates may hold court in towns other than the county seat but are not entitled to travel expenses; the clerk of the magistrate court should be present while court is in session.

January 17, 1947



Honorable Cline C. Herren
Judge of the Probate Court
Webster County
Marshfield, Missouri

Dear Sir:

We are in receipt of your letter of November 19, 1946, in which you request an opinion from this department. Your letter reads in part as follows:

"Webster County has a peculiar situation in that about half of our urban population live in towns which are from 12 to 25 miles from the county seat. As a matter of economy in costs and as a convenience to the public, I propose to hold magistrate court in these other towns at intervals which in my discretion may seem necessary, after obtaining the above court order.

"I intend to interest civic organizations in these other towns to furnish a place to hold court so that this will not be a burdensome expense to the county. Also, it is my contention that I shall be able to hold such hearings without the presence of my clerk; that minutes of such proceedings may be transferred from a temporary record to my permanent minute book when I return to my office; and that I shall need to use only the records permanently retained at the county seat office.

"Please advise at your earliest convenience if the above intended procedure meets all requirements. If it is found to be satisfactory what expense will the county court be authorized to pay me in

the way of mileage incurred in holding court in these other towns."

Your letter presents two questions for consideration. First, is a magistrate entitled to expenses incurred while traveling to and from various towns in the county, designated by the county court as additional places for holding court? Second, may a magistrate hold court in such additional places as designated by the county court without the presence of the clerk of the magistrate court?

In view of the provisions of Section 18, Senate Bill 207 of the 63rd General Assembly, authorizing an additional place or additional places in the county for holding magistrate court, there should be no objection to the Magistrate of Webster County holding court in towns other than the County Seat when it is deemed necessary in the light of geographical conditions, economy in costs, and convenience to the public. Of course, these additional places must first be authorized by the County Court. Section 18 of Senate Bill 207 reads as follows:

"The county seat shall be the seat of the magistrate court, and the county court may, by proper order, provide an additional place or places in the county for holding of magistrate court; provided however that in counties of the first class the county court may by proper order establish the seat of any magistrate court at some place within the county other than at the county seat."

It has been held in an opinion from this department to Honorable Erwin F. Vetter, dated October 18, 1946, that "it is the duty of county courts to establish and maintain out of the county funds the offices of the magistrate courts in their respective counties."

Following this authority, all additional places in the county designated by the county court for holding magistrate court should be maintained out of county funds, but it does not follow that magistrates should be reimbursed for travel expenses. Article V, Section 24 of the 1945 Constitution, provides that

"judges may receive reasonable traveling and other expenses allowed by law." However, there is no provision in the magistrate law allowing such expenses and such expenses cannot be considered incidental to maintaining the offices of a magistrate in these other towns. Therefore, in absence of such a provision, the magistrate is not entitled to travel expenses.

In order to answer the second question it must be noted that the magistrate courts are courts of record under Section 19 of Senate Bill 207. Certain clerical and administrative duties are imposed upon the clerks of those courts by this bill. These duties and functions were considered necessary and sufficiently important by the Legislature in passing this law to warrant providing a clerk to handle them. If this clerk is not present while court is in session many of these duties will not be performed.

Therefore, it necessarily follows that it was the intention of the Legislature that a person appointed as clerk of the magistrate court should be present during the time court is in session in order to perform the duties and functions as are set out by law with regard to clerks of the magistrate court. This position is further strengthened by Section 12828, R. S. Mo. 1939, which provides that both elective and appointive officers are subject to removal from office upon their failure to devote their time to the performance of the duties of such office.

However, the situation arising in view of the above letter may be remedied under the provisions of Section 21, Senate Bill 207, which reads in part:

"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, * *"

Following this section, a magistrate authorized to hold court in places other than the county seat could appoint

such deputy clerks as needed to perform the duties of clerk of the magistrate court in those additional places. These deputy clerks could be residents of those places, thereby doing away with traveling expenses to and from the places where court is held. Of course the appointment of additional clerks would necessarily be limited by the amount of funds allotted by the state to the magistrate for this purpose, as provided for in Section 22 of Senate Bill 207,

If it is found that said funds are too limited to employ a sufficient number of clerks, Section 21 of Senate Bill 207 provides another possibility:

"* * * 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. All such clerks, deputies and employees shall serve at the pleasure of the magistrate. * * *"

Under this provision the county court is authorized to provide such additional clerks or deputy clerks as the particular situation may require. These clerks are to serve at the pleasure of the magistrate and shall be compensated by the county court from county funds.

Conclusion

Therefore, it is the opinion of this department that a magistrate may hold court in towns other than the county seat when he considers it necessary, upon order of the county court, but is not entitled to be reimbursed for expenses incurred in travel to said other towns. It is further the opinion of this department that a clerk or deputy clerk should be present while court is in session to perform such duties as are set out by law in regard to clerks of the magistrate court.

Respectfully submitted,

APPROVED:

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