

COUNTY COURT: Judges not entitled to mileage when they sit as members of the county board of equalization.

August 17, 1940.

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Mr. Lankin James, Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of May 2nd, wherein you state as follows:

"The County Court has asked that I write you for your interpretation of Section 9818 R. S. Mo. 1929, relating to compensation of members of the Board of Equalization, and Section 2092, as Amended Laws, 1939, Page 332, relating to compensation for Judges of the County Court.

"In accordance with Section 2092, Laws 1939, Judges of the County Court in counties having less than 75000 inhabitants, receive five (5¢) cents per mile for each mile necessarily travelled in going to and returning from the place of holding County Court. Saline County is a county having over 30000 and less than 75000 inhabitants.

"As members of the County Board of Equalization, the judges of the County Court receive \$5.00 per day for each day they shall act as members of the County Board of Equalization, in accordance with Section 9818, R. S. Mo. 1929.

"They desire your opinion as to whether they are entitled to receive mileage provided for in Section 2092, supra, for the days they are sitting as Judges of the County Court on

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the Board of Equalization. They are of the opinion that inasmuch as they are required to sit as Judges of the County Court on the Board of Equalization, that they are performing a duty of the Judges of the County Court and as such, should receive mileage provided for under Section 2092, Laws '39."

"I would very much appreciate your opinion."

According to your letter Saline is a county having over 30,000 and less than 75,000 inhabitants,

Laws of Mo. 1939, Section 2092, Page 332, 333, provides for compensation and mileage to judges of the county court:

"In all counties of this state now or hereafter having seventy-five thousand inhabitants and less than ninety thousand inhabitants, the judges of the county court shall receive an annual salary of twenty-five hundred dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, under the provisions of section 7892, R. S. 1929. In all counties of this state now or hereafter having ninety thousand inhabitants and less than one hundred fifty thousand inhabitants, the judges of the county court shall receive an annual salary of three thousand dollars. Said salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, as provided by section 7894. In all counties of this state now or hereafter having one hundred fifty thousand inhabitants, and less than three hundred thousand inhabitants, the judges of the county court shall receive an annual salary of forty-five hundred dollars. Said

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salary to be in lieu of the per diem heretofore allowed by law to said judges as judges of the county court, and in lieu of the salary heretofore allowed by law to said judges as members of the board of road overseers, under the provisions of section 7892 R. S. 1929, and in lieu of all other fees, compensation, or salaries, heretofore allowed by law to said judges, except the per diem as allowed to said judges as members of the board of equalization and board of appeals. In all counties of this state now or hereafter having more than three hundred thousand inhabitants, the judges of the county court shall receive an annual salary of four thousand eight hundred dollars. Said salary of four thousand eight hundred dollars to be in lieu of the per diem heretofore allowed by law to such judges of the county court, and in lieu of the salary as road overseers heretofore allowed by law to said judges, as provided in section 7897, R. S. 1929, and in lieu of all other fees, or salaries heretofore allowed by law to said judges, except the per diem allowed to said judges as members of the board of equalization and the board of appeals. The salaries herein fixed for the judges of the county court in all counties of this state having more than seventy-five thousand inhabitants shall be paid in equal monthly installments as the salaries of other county officers are paid. In all counties of this state now or hereafter having less than seventy-five thousand inhabitants, the judges of the county court shall receive for their services the sum of five dollars per day for each day necessarily engaged in holding court. In addition to the salaries herein authorized to be paid to judges in the county court in counties having seventy-five thousand inhabitants or more, and in addition to the per diem herein authorized to be paid to the judges of the county court in counties having less than seventy-five thousand inhabitants, said judges shall receive five cents per mile for each mile necessarily traveled in

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going to and returning from the place of holding county court; Provided that in all counties now or hereafter having a population of twenty thousand inhabitants or less such mileage shall be charged only once for each regular term and such mileage shall not be charged over eight times per year for special or adjourned terms.

Thus in addition to the per diem authorized to be paid to judges of the county court, in counties having less than 75,000 inhabitants, for each day necessarily engaged in holding county court, the judges are entitled to "five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court."

The question presented is whether the judges of the county court are entitled to mileage when they sit as members of the county board of equalization?

Section 9811 R. S. Mo. 1929, provides how the county board of equalization shall be constituted:

"There shall be in each county in this state, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year: Provided, that in any county having adopted township organization, the sheriff of said county shall be a member of said board of equalization: Provided further, that in counties containing a population of more than seventy thousand, such board shall meet upon the first Monday of March in each year."

The judges of the county court do not alone constitute the county board of equalization, thus it is obvious when judges of the county court sit as members of the county board of equalization that they are not sitting as members of the county court.

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Section 9818 R. S. Mo. 1929, provides the compensation for county judges as members of the county board of equalization:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, and the county clerk shall receive \$5.00 per day for each day they shall act as members of the county board of equalization: Provided, that this section shall not apply to boards of equalization who are paid a salary."

No provision is made for mileage for county judges as members of the county board of equalization under the above section, and absent a statute authorizing such payment, it cannot be made. The case of Nodaway County v. Kidder, 129 S. W. (2d) 857, l. c. 860, declares the rule as follows:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279, S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

Furthermore provision having been made for mileage while holding county court, the familiar rule of

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of statutory construction "expressio unius est exclusio alterius" is applicable. Which means that "the expression of one thing is the exclusion of the other". State ex inf. v. Sweaney 270 Mo. 1. c. 692.

From the foregoing we are of the opinion that judges of the county court are not entitled to mileage when they sit as members of the county board of equalization.

For your information we are also pleased to submit copies of opinions rendered by this department under dates of October 30, 1939 and December 15, 1939, respectively, wherein Section 2092, supra, is also construed.

Respectfully submitted.

MAX WASSERMAN
Assistant Attorney General.

APPROVED BY:

COVELL R. HEWITT
(Acting) Attorney General.

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