

PROBATION OFFICER: County Court has authority to pay salary of Probation Officer by virtue of Class 4, Section 2, Budget Law 1933, maximum salary allowable.

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May 23, 1935.



Mr. Cecil W. Roberts,
Editor, Farmington Press,
Farmington, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of May 3rd as follows:

"Some time ago when you came through Farmington on your campaign you told me not to hesitate when I had a favor to ask of you. Well that time has come, but don't be alarmed. I don't want a loan or a job. Merely a legal opinion on a matter that has arisen here.

"Prior to this year this Judicial District was blessed with a Republican Circuit Judge who, quite naturally, appointed a Probation Officer for St. Francois County at a monthly salary of \$100.

"In the last election we put Taylor Smith over for Circuit Judge and in return for our help Taylor offered myself the appointment of Probation Officer in this County. However, our County Court is undergoing a wave of economy and they have refused to pay any salary for the office of Probation Officer.

"St. Francois County has an official population of more than 35,000 and because of the terrible conditions in the lead belt there is a great need for a Juvenile officer. Only this week the Bonne Terre paper carried an editorial on the need of such an officer.

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"Now I wish you would send me your opinion as Attorney-General of Missouri, as to whether the County Court shall pay the salary of a duly appointed Juvenile Officer, and if so, what the maximum salary is."

We are assuming the following statement of facts to be correct: First, that the juvenile officer is duly appointed, as stated in your letter, and, second, that the county court has not appointed a superintendent of public welfare, as provided in Section 14132, R. S. No. 1929.

Section 14174, R. S. No. 1929, provides:

"The probation officer may receive such salary as the circuit court may with the approval of the county court prescribe, not exceeding one thousand dollars per annum in counties of twenty thousand inhabitants and less than fifty thousand inhabitants, and not exceeding three hundred dollars per annum in counties of less than twenty thousand inhabitants. Deputy probation officers may receive such salaries as may be prescribed by the circuit court with the approval of the county court, not exceeding five hundred dollars per annum in counties of twenty thousand and less than fifty thousand inhabitants, and not exceeding two hundred dollars per annum in counties of less than twenty thousand inhabitants."

The above section clearly provides for an appointment of a probation officer and the maximum salary allowed such officer in counties of twenty thousand inhabitants and less than fifty thousand. St. Francois County, having only thirty-five thousand inhabitants, comes within this classification.

You will notice the following statement in the above Section 14174: "The probation officer may receive such salary as the circuit court may with the approval of the county court

prescribe, not exceeding one thousand dollars per annum". The question now arises, how to interpret the phrase "with the approval of the county court". Does this confer on the county court a reasonable or arbitrary power of approval?

In *State ex rel. Thomas Adamson v. The Lafayette County Court*, 41 Mo. 221, this same question arises. The sheriff shall give bond to the state to the satisfaction of the county court. The court in this case said:

"There is nothing presented before the tribunal for adjudication, and its action is not the exercise of a judicial discretion or judgment within the meaning of the rule.

"The approval or rejection of the bond is essentially a ministerial act, though coupled with a discretion. When the law devolves upon an officer the exercise of a discretion, it is a sound legal discretion, not a capricious, arbitrary or oppressive one.

"A hostile court could remove any sheriff in the state and vacate his office by declaring his bond insufficient, and arbitrarily refusing to hear any testimony in regard to the solvency and pecuniary responsibilities of his sureties.

"A discretion delegated to an officer is a sound legal discretion, the meaning of which is well known and understood in the law, and is not an unlimited license to the officer to act and do as he pleases, irrespective of restraint."

Also in *Riesland v. Bailey, County Clerk*, 31 Pac. Rep. (2d) 183, the court said:

"It is stated in High's *Extraordinary Remedies* (3d Ed.), Sec. 238, in effect that it is held, but not always, that if a particular court is designated, whose duty

it is made to approve a bond, this approval is not the exercise of such a judicial function as to preclude control by mandamus. The approval or rejection of the bond in such case, although coupled with some degree of discretion, is held to be essentially a ministerial act, and hence subject to control by mandamus."

Therefore, from the above decisions, we are of the opinion the phrase, with the approval of the county court, indicates this approval must be reasonable and not capricious, arbitrary or oppressive.

The 57th General Assembly enacted the so-called County Budget Law in 1933. Section 1 of this act, found on page 340, Laws of Missouri 1933, provides:

"All counties now or hereafter having a population of 50,000 inhabitants or less, according to the last federal decennial census, shall be governed by sections 1 to 8 inclusive, of this act."

Section 2, Class 4, of the County Budget Law, provides:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

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The above section merely designates under which classification the county court shall pay such officer.

Therefore, it is the opinion of this department that the county court is authorized to pay the salary of the probation officer out of Class 4, Section 3, Budget Law of 1933, and the maximum salary shall not exceed one thousand dollars per annum, as of Section 14174, R. S. No. 1929, and shall be of such amount as the circuit court may with the approval of the county court prescribe. Furthermore, such approval of the county court shall be reasonable and not arbitrary.

Yours very truly,

FRANKLIN E. REAGAN,
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK,
Attorney-General.

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