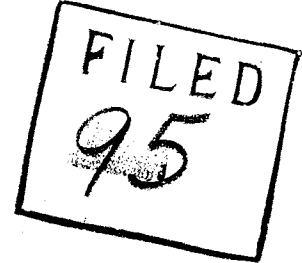


MAGISTRATES:
COUNTY TREASURER:

One person may be employed by clerk in both the probate and county treasurer's office. County courts have the right to provide for additional clerk hire for the magistrate if the court finds that such a need exists.

April 10, 1947



Honorable H. L. C. Weier
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Sir:

We hereby acknowledge receipt of your several letters of recent date in which you have presented the following questions to this department for an official opinion:

- (1) May the same person be employed as clerk of the probate court and as part-time clerk of the county treasurer?
- (2) Has the county court the right to provide compensation for a clerk in the county treasurer's office?
- (3) May the county pay additional clerks in the magistrate's office?

We note that Jefferson County has an assessed valuation of \$29,552,478, and is therefore a third class county.

We will answer questions one and two together in that they are immediately related. We would like to point out at the outset that there is no statutory authority for the hiring of a clerk in the county treasurer's office in counties of the third class. There is such statutory authority in counties of the first and second classes. Therefore, under the doctrine laid down by the Supreme Court in the case of Rinehart v. Howell County, 153 S. W. (2d) 381, we believe that the county treasurer in counties of the third class may be reimbursed by the county court for reasonable sums paid for necessary clerk hire. In this case the court said at l. c. 383:

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic services in the discharge of the present-day duties of prosecuting attorneys in the communities affected--an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's protection of the interests of the state, the county and the public. **"

This may only be done if the county court finds this expense is bona fide and reasonable and if it further finds that the clerk hire is absolutely necessary for the proper conduct of the office of county treasurer. Conversely, if the county court believes that the county treasurer can perform his duties without any additional help, it would be justified in refusing to provide compensation for said clerk.

If the county court finds that it is necessary to hire a clerk in the county treasurer's office, then the same person may hold that job and be employed as clerk of the probate court. After diligent search we have found no statutory or constitutional prohibition of this practice.

In answer to your third question we direct your attention to Section 21 of Senate Bill 207 of the 63rd General Assembly, which provides in part as follows:

"* * * 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, 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. * * *"

It is clear from the above provision that the county court may authorize the employment of additional clerks at the cost of the county in the magistrate's office if they believe that such a need exists.

Conclusion

Therefore, it is the opinion of this department that the county court may pay for clerk hire in the county treasurer's office if they find that such clerk hire is necessary for the proper conduct and administration of the affairs of said office, and that such clerk may also be employed as a clerk in the probate court.

It is further our opinion that the county court is authorized at the cost of the county to provide additional clerks, deputy clerks or employees for the magistrate court if they find the need exists.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

FW:EG