

COUNTY COURT: In order for judge of county court of Newton County to be entitled to five dollars per day while the court is in session, he must actually be present on those days.

---

December 15, 1939

Hon. Herbert H. Douglas  
Prosecuting Attorney  
Newton County  
Neosho, Missouri



Dear Sir:

We are in receipt of your request, under date of December 12, 1939, for an opinion, which reads as follows:

"I write you for an opinion in regard to the following matter:

"Can a member of the County Court collect his pay when a majority of the Court is in session but the member in question is not present on this particular day."

Section 2092 R. S. Missouri, 1929, repealed and reenacted in Laws of Missouri, 1939, page 332, reads in part as follows:

"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. \* \* "

Since the 1930 census shows Newton County has a population

Hon. Herbert H. Douglas

(2)

December 15, 1939

of 26,959, the above provision set out would govern the compensation of the judges of the county court in your county.

We are not unaware of the general rule that the right to the compensation attached to a public office is an incident to the title to the office, and not to the exercise of the functions of the office. *Currio v. Franklin County*, 315 Mo. 405, 285 S. W. 1007; *State v. Gordon* 245 Mo. 12, 149 S. W. 638; *King v. Riverland Levee Dist.* 218 Mo. App. 490, 279 S. W. 195. To apply that rule in the present case, however, would fly into the face of the clear expression of Legislative intent expressed in Section 2092, supra. By its express provision, you will note, the county judges are to receive five dollars per day for each day necessarily engaged in holding court. A condition precedent to the right to receive payment is set forth by the words of the act, namely, the condition that the county judge be "necessarily engaged in holding court." There is no ambiguity. In the case of *Fichtner v. Mohr*, 16 S. W. (2d) 739, l.c. 741, the court said:

"\* \* We are bound to ascertain and give effect to the intention of the Legislature as expressed in the statute, and, where the language used is plain, it must be given effect by the courts. *Lincoln University v. Hackmann*, 295 Mo. loc. cit. 125, 243 S. W. 320; *DeHart v. School District*, 214 Mo. App. loc. cit. 657, 263 S. W. 242. \* \* \*"

#### CONCLUSION

In view of the above, it is the opinion of this Department that a judge of the county court of Newton County, is not entitled to compensation under Section

Hon. Herbert H. Douglas

(3)

December 15, 1939

2092, supra, unless he is actually present on the day  
in question.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

---

TYRE W. BURTON  
(Acting) Attorney General

RPCW:RW