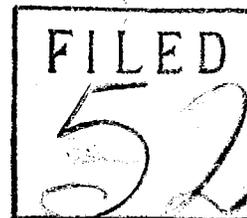


COUNTY BUDGET LAW: In the county budget, the traveling and hotel expenses of the circuit court reporter should be classified in class 2.

April 11, 1941

Mr. J. F. Leggett, Jr.
Official Court Reporter
22nd Judicial Circuit
Bloomfield, Missouri



Dear Sir:

This is in reply to your recent request for our opinion in your letter which is in the following terms:

"I am court reporter for the 22nd Judicial Circuit, comprising Stoddard and Dunklin Counties, and under the statutes I am entitled to traveling and hotel expenses while attending circuit court away from home.

To start with these expense warrants were issued from class 2 of the county budget, then they were placed in class 4, and now the county clerk informs me that the Auditor has ruled that they should be in class 5. As I understand it, "expenses of holding Circuit Court" are placed in class 2 and certainly the expenses of the court reporter in getting to that court would be "expenses of holding Circuit Court". I can't see how any other interpretation could be put on these expenses.

I would appreciate it if you would give me an opinion as to which class of the budget my traveling and hotel expenses should be placed."

Regarding the classification of your salary, as distinguished from your expense account, we adhere to the

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opinion of the Attorney General to you dated March 1, 1934 (No. 52), ruling that such salary should be classified in class 4.

The County Budget Law, Section 10914 R. S. 1939 in part provides:

"The court shall show the estimated expenditures for the year by classes as follows:

* * * * *

Class 2. Expense of conducting circuit court and elections, * * * ."

And, Section 10911, R. S. 1939 in part provides:

"Class 2. Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this law. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1."

The traveling and hotel expense account of the court reporter is plainly included within the above quoted terms of Section 10911: ". . . cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this law." Such expense is made chargeable against Dunklin and Stoddard Counties comprising the 22nd Judicial Circuit (Section 2148 R. S. 1939), by Section 13347 R. S. 1939

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which provides:

"Every official court reporter of a circuit or a criminal court in counties having forty-five thousand inhabitants and less shall be allowed and paid all sums of money actually expended only in necessary hotel and traveling expenses while engaged in attending any regular, special or adjourned term of court at any place in the circuit in which he is appointed, other than the place of his residence therein, or while engaged in going to and from any such place for the purpose of attending such terms of court. Such moneys shall be paid out of the county treasuries of the respective counties in said district in proportion to their respective populations."

The population of neither Dunklin nor Stoddard County exceeds 45,000, and the total combined population of the two counties exceeds 60,000. In such a circuit the reporter receives his traveling and hotel expenses under said Section 13347, which is the same as R. S. 1919, Section 12674, as it was ruled in the following terms in *Woodside vs. Dent County* 271 S. W. 766, l.c. 767, 308 Mo. 227:

"Appellant was resident of Dent county within the judicial circuit for which he was the duly appointed, qualified, and acting official court reporter. Circuit court was held in every county in this circuit, and every county in the circuit had less than 45,000 inhabitants, though the total population of the circuit was more than 60,000. The facts in appellant's case clearly bring him within the purview of sections 12670 and 12674, R. S. 1919,

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and he was entitled to recover the full amount sought."

Such expense is not provided for in any other classification by the budget law. Class 4 is for salaries of county officers, for office supplies, and office expense; class 5 is for emergency and contingent expense (Section 10911 and 10914 R. S. 1939).

It might be more convenient and desirable from a purely financial and bookkeeping and administrative standpoint to have expense accounts and salaries of all officers in the same classification in the budget - class 4. However, we are bound by the words of the statute as it now stands. In said Section 10911 and 10914 the items of expense mentioned in class 4 are "amount necessary for the conduct of the offices of such officers," and "office expense." Within class 4 are expenses of offices which are open and doing business regardless of whether the circuit court is in session, and offices which in their functions are not directly related to the circuit court. In writing class 2, the legislature seems to have regarded the payment of expense of holding circuit court (and of elections) as being of greater importance than everything except payment of care of insane paupers. The legislature gave priority to the payment of expense of holding circuit court over payment even of salaries. There can be no trial without a court reporter. The traveling and hotel expense of such reporter is one of the costs and expenses of holding circuit court; while class 2 includes court costs chargeable against a party to a lawsuit, it is not confined to such costs, but also includes expenses of holding circuit court chargeable against the county.

In classifying this expense heretofore, the State Auditor and the county clerks appear to have been following an opinion of the Attorney General dated January 23, 1934, addressed to Honorable Wade W. Maupin, Prosecuting Attorney of Carroll County (No. 58) wherein it is stated generally that all traveling expense should be classified in class 5. But the traveling and hotel expense of the circuit

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court reporter is hereby ruled to be an exception to that rule.

CONCLUSION

In the county budget, the traveling and hotel expenses of the circuit court reporter should be classified in class 2.

Respectfully submitted

LAWRENCE L. BRADLEY
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APPROVED:

VANE THURLO
(Acting) Attorney General

EH:RT