

CORONERS:

Coroner of third class county entitled only to compensation and mileage for services provided by Sections 13259.4 and 13259.5, Mo. R.S.A. 1939. Must pay all fees accruing in office to county treasurer.

COMPENSATION: MILEAGE, RIGHT TO:

March 17, 1950



Mr. W. V. Mayse  
Prosecuting Attorney  
Harrison County  
Bethany, Missouri

Dear Sir:

This is to acknowledge receipt of your recent letter requesting a legal opinion on the facts stated therein. Said letter reads as follows:

"Would you please furnish me an opinion from your office on the following questions:

- (1) Does a Coroner in third class counties receive any compensation besides that allowed by Section 13,259.4?
- (2) Under the provisions of Section 13,259.6, does a Coroner have to return to the county all fees he receives, other than his salary, or may he retain some fees and if so what fees and by authority of what Section or Sections of our law in this state?"

Section 13259.4, Mo. R.S.A. 1939, referred to in paragraph Number (1) of your letter, reads as follows:

"The coroner in all counties of the third class shall receive for his services annually, payable out of the county treasury in equal monthly installments the following: In counties with a population of less than 10,000 the sum of \$120.00; in counties with a population of 10,000 and less than 15,000, the sum of \$180.00; in counties with a population of 15,000 and less than 20,000, the sum of \$240.00; in counties with a population of 20,000 and less than 24,000 the sum of \$360.00; in counties with a population of 24,000 and less than 30,000 the sum of \$480.00; and in counties having a population of 30,000 and more the sum of \$600.00."

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Section 13259.6, referred to in paragraph Number (2) of your letter reads as follows:

"It shall be the duty of the coroner in counties of the third class to charge and collect in all instances every fee accruing to his office by law; except such fees as are chargeable to the county and such coroner shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating on what account said fees were charged and collected, together with the names of persons paying or who are liable for the same, which report shall be verified by the affidavit of said coroner. It shall be the duty of said coroner, upon the filing of such report, to forthwith pay over to the county treasury all fees required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and one in the office of the clerk of the circuit court, and every such coroner shall be liable on his official bond for all such fees collected and not accounted for by him and paid by him to the county treasury."

Under the provisions of Section 13259.4, supra, "The coroner in all counties of the third class shall receive for his services annually, payable out of the county treasury in equal monthly installments the following: \* \* \*" it is noted that amounts to be paid vary according to the population of such county, and ranges from \$120.00 in those counties having a population of 10,000, to \$600.00 in other counties having a population of more than 30,000 inhabitants.

It appears that Harrison County is a county of the third class and according to the last decennial census report contained 16,525 inhabitants. Under the provisions of Section 13259.4, supra, the coroner of your county would be entitled to an annual salary of \$240.00 to be paid to him out of the county treasury in equal monthly installments in the sum of \$20.00 each.

Section 13259.5 Mo. R.S.A. 1939, provides that the coroner shall under the circumstances referred to in said section be entitled to mileage and reads as follows:

"The county court shall allow the coroner, payable at the end of each month out of the county treasury, five cents per mile for each mile actually and necessarily travelled in the performance of his official duties."

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We are unable to find any statute or court decisions in Missouri, defining the term "mileage" and since we find it necessary to define such term and the use of same in the discussion of the facts before us, we turn to the court decisions outside of Missouri for a good definition of said term.

In the case of Richardson vs. State, 66 Ohio St. 108, the court said:

"'Mileage' is defined in the Century Dictionary as payment allowed to a public functionary for the expenses of travel in the discharge of his duties, according to the number of miles passed over. The same definition substantially is found in Bouvier's and other law dictionaries."

In the case of Caswell vs. New York Cent. R. Co., 248 N.W. 641, 1.c. 642, the court said:

"'Mileage' is a well-established method widely used in public and private business of reimbursing an officer or employee for the expense necessarily sustained by him in traveling to perform his duties. 'Mileage' is merely a substitute for actual expenses, and theoretically covers only the cost of transportation \* \* \*"

Again, in the case of United States vs. Smith (1895) 158 U.S. 346, 1.c. 349, 350, the court said:

"1. The first item relates to the allowance of the claim for mileage. While an allowance for travel fees or mileage is, by section 823, included in the fee bill, we think it was not intended as a compensation to a district attorney for services performed, but rather as a reimbursement for expenses incurred, or presumed to be incurred, in travelling from his residence to the place of holding court, or to the office of the judge or commissioner. \* \* \* And while, in some cases, it may operate as a compensation, it is not so intended, and is not a fee, charge, or emolument of his office within the meaning of section 834. It is much like the arbitrary allowance for the attendance of witnesses and jurors, which may or may not be sufficient to pay their actual expenses, depending altogether upon the style in which they choose to live."

Mileage was defined as follows in 40 Corpus Juris, page 658; Note 50(a):

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"Mileage . . . is a recompense to the sheriff for the expense and labor of the travel which he has to perform in serving the process of the court. It can hardly perhaps be called a fee; it seems rather an equivalent or reimbursement for toil or travel actually undergone."

In the foregoing definitions of the term "mileage" it is noted that where "mileage" is paid to a public official by the proper governmental authority responsible for such payment, that such mileage is not considered as a part of the compensation paid for services rendered, but rather mileage fees are treated as reimbursement paid the officer for funds he has found it necessary to expend for travelling expenses incidental to the performance of his official duties.

In connection with the discussion of the definition of "mileage" we desire to call further attention to the sections quoted above. We note that Section 13259.5 or the "mileage section" is separate from and immediately follows Section 13259.4, or the "salary section." We therefore conclude that it was the intention of the legislature in the enactment of these laws that the coroner should receive mileage fees at the rate of five cents per mile for each mile actually and necessarily travelled while engaged in the performance of his official duties and that such mileage fees were to be in addition to his annual salary and that such fees are not to be considered as a part of the annual compensation for services rendered but as a reimbursement for travelling expenses borne by him.

Section 13259.6 relating to the collection and disposition of coroner's fees reads as follows:

"It shall be the duty of the coroner in counties of the third class to charge and collect in all instances every fee accruing to his office by law; except such fees as are chargeable to the county and such coroner shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating on what account said fees were charged and collected, together with the names of persons paying or who are liable for the same, which report shall be verified by the affidavit of said

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coroner, It shall be the duty of said coroner, upon the filing of such report, to forthwith pay over to the county treasury all fees required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and one in the office of the clerk of the circuit court, and every such coroner shall be liable on his official bond for all such fees collected and not accounted for by him and paid by him to the county treasury."

We feel that within the meaning of this section it is quite obviously the duty of the coroner of a third class county to charge and collect every fee allowed by law to be charged and collected for by such coroner. Only fees chargeable to his county are excepted. None of the fees so collected belong to or may be retained by the coroner but it is his further duty to file a monthly report of fees collected and to pay over all such fees to the county treasurer. The detailed procedure for the filing of the report and the payment of the fees is provided in above section and it is further noted that for a failure to perform the duties mentioned, the coroner shall be liable on his official bond.

We therefore submit that in answer to your inquiries:

(1) That a coroner of a third class county is entitled to receive only that compensation for his services provided by Section 13259.4, supra. That Harrison County, according to the last decennial census report has a population of 16525 and the coroner of said county is entitled to receive the sum of \$240.00 annually as payment in full for services rendered, and that said sum shall be paid to him in twelve monthly installments of \$20.00 each. That in addition to said annual salary such coroner is, under the provisions of Section 13259.5, entitled to receive travelling expenses at the rate of five cents per mile for each mile actually and necessarily travelled by him in the performance of his official duties. That the coroner of a third class county is not entitled to receive any other compensation or expenses than that mentioned in the preceding paragraph.

(2) That under the provisions of 13259.6, supra, it is the duty of a coroner of a third class county to charge, collect, and report every fee accruing to his office that may be legally charged and collected for by him, except those fees chargeable to his county. That none of said fees collected may be retained by the coroner as

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his own, there being no section of the statutes which would authorize such action but all such fees must be paid into the county treasury by him.

#### CONCLUSION

(1) It is therefore the opinion of this department that a coroner of a third class county shall receive for his services annually such sum as may be due him under the provisions of Section 13259.4, Mo. R.S.A. 1939, and that in addition thereto he shall also receive travelling expenses at the rate of five cents per mile for each mile actually and necessarily travelled in the performance of his official duties as provided by Section 13259.5, Mo. R.S.A. 1939.

(2) It is the further opinion of this department that a coroner of a third class county is not entitled to any other remuneration than the salary and mileage noted above, and that it is the duty of such coroner to charge, collect, report and to pay over all fees so collected to the county treasurer of his county except such fees that are chargeable to said county. That the coroner may not retain as his own any of the fees so collected but must pay them into the county treasury, and for a failure to duly account for and pay over said fees said coroner will be liable on his official bond.

Respectfully submitted,

PAUL N. CHITWOOD,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General