

COUNTY OFFICERS:
COUNTIES:
MILEAGE:
EXPENSES:

A county court may in its discretion reimburse county officers for travel expenses necessarily and indispensably incurred in the performance of the duties of their offices.

OPINION NO. 350 & 351
(AMENDED December 31, 1975)

September 30, 1969

Honorable Haskell Holman
State Auditor
State of Missouri
Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Holman:

This is in reply to your letter of recent date wherein you inquired if it were legal for the county courts of second, third, and fourth class counties to reimburse prosecuting attorneys or their assistants, sheriffs or their deputies, county court judges, and county clerks for expenses incurred in attending specified conventions, meetings, and seminars.

This is also in reply to your letter of the same date asking if certain prior opinions of this office were still valid. These opinions were to W. W. Crockett, May 6, 1942; George P. Adams, July 18, 1947; Haskell Holman, September 10, 1963, and Harold H. Henry, March 5, 1964. The Crockett and Holman opinions relate to travel expenses for county officers attending conventions, and the Adams opinion concerns payment of mileage to county officers in day-to-day travel while engaged in county business. The Henry opinion concerns an officer's commuting expenses.

County courts have a certain latitude in managing the fiscal affairs of their counties.

" . . . county courts do not act judicially in allowing, adjusting, or refusing claims presented against the county or necessarily arising from managing its financial affairs. While such body does not act in a purely ministerial capacity in such matters, in the sense that they act without investigation and have no discretion in the matter, yet they do not try the

Honorable Haskell Holman

merits of the claim as a court, but rather act as auditing financial agents of the county whose action is not final in the sense that a judgment of the court is final except on appeal or by other appropriate remedy.

"By our Constitution, county courts are created and are given jurisdiction to transact all county business. Article 6, §36 [Art. VI, §7, 1945 Mo. Const.]. By statute, section 2078, R. S. 1929, [§49.270, RSMo 1959] such courts are given power 'to audit and settle all demands against the county.' And section 12162, R. S. 1929, [§50.160, RSMo 1959] provides that 'the county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts.' The county court, when it ascertains any sum of money to be due from the county, shall order the clerk to issue a warrant in a prescribed form. Section 12163, R. S. 1929 [§50.180, RSMo 1959]. And the county treasurer 'shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court.' Section 12136, R. S. 1929 [§54.100, RSMo 1959]." Jackson County v. Fayman, 44 S.W.2d 849, 852 (Mo. 1931) (Emphasis added)

In approving the county's annual budget, a county court exercises discretion.

". . . It is evident from the language of the County Budget Law that county courts in complying with the Law have duties of a discretionary nature in examining, revising and changing the estimates of the county's expenditures to the end of promoting the standard of 'efficiency and economy in county government.' Section 10917, [§50.740, RSMo 1959] . . .

* * * *

"We have noticed the Legislature has seen fit to delegate to the county court discretionary powers and duties under Section 10917 of the County Budget Law--the county court can be said

Honorable Haskell Holman

to be 'the agency most familiar with the fiscal affairs and financial condition of the county.' . . . as well as the agency most likely to soundly budget estimated receipts and expenditures to the end of efficiency and economy in county government. It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or, if such were the charge, acted fraudulently or corruptly)." (Bradford v. Phelps County, 210 S.W.2d 996, 999-1000, 1001 (Mo. 1948))

Specifically, county courts are required to approve a budget that includes ". . .all proposed expenditures for the administration, operation and maintenance of all offices, . . ." (§50.550, RSMo 1959, Class I and II Counties) and ". . .the estimated amount necessary for the conduct of the offices. . . ." (§50.680, RSMo 1959, Class III and IV Counties). In so doing, the county court is performing the:

". . .discretionary quasi-legislative function and duty, . . .of determining the necessity and amount of expenditures not otherwise specifically provided for by statute. . ." (Miller v. Webster County, 228 S.W.2d 706, 708 (Mo. 1950))

We believe that the several county courts may properly budget for certain officers' travel expenses and thereafter reimburse the officers for such expenses upon a finding by the county court that the travel is indispensably necessary to carrying out the duties of the office. For attendance at conventions or the like, we believe the test employed by the county court should be the practical benefit of such attendance to the county. If the primary purpose of the trip is to gain information clearly applicable, or of definite utility, to the particular officer's county duties, then we believe the county court may allow reimbursement of actual and necessary expenses. However, if there is only a long term general benefit to the particular officer in attending the convention, then the county court should, in our view, decline to make the reimbursement.

In the absence of express statutory authorization, we do not believe county officers can be reimbursed for any of their expenses attributable to travel between work and residence. See Opinion No. 50,

Honorable Haskell Holman

1964, to Henry, referred to in your request, a copy of which is attached. For example, specific statutory authority for payment of mileage to county judges in third and fourth class counties for travel between their residences and the place of holding court is found in Sections 49.110 and 49.120, RSMo.

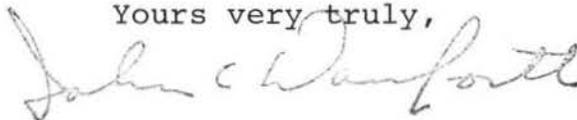
We are withdrawing the opinions of May 6, 1942, to W. W. Crockett; July 18, 1947, to George P. Adams, and September 10, 1963, to yourself. The opinion of March 5, 1964, to Harold H. Henry still represents the view of this office.

CONCLUSION

Therefore, it is the opinion of this office that a county court may in its discretion reimburse county officers for travel expenses necessarily and indispensably incurred in the performance of the duties of their offices.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Louren R. Wood.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 50
3-5-64, Henry