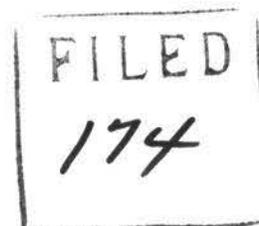


COMPENSATION: Members of the county board of  
COUNTY OFFICERS: equalization established pur-  
COUNTY BOARD OF EQUALIZATION: suant to Sections 138.010 and  
138.020, RSMo, are entitled to  
statutory per diem unless they receive only salary as compensa-  
tion for the office which they hold.

OPINION NO. 174

April 11, 1974

Honorable John D. Ashcroft  
State Auditor of Missouri  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Ashcroft:

This opinion is in response to your question asking:

"Section 138.020 RSMo 1969, provides:  
'The judge of the County court, the county  
surveyor, the members as may otherwise be  
provided, shall receive five dollars per  
day for each day they shall be present and  
act in the performance of their duties as  
members of the County Board of Equalization;  
provided, that the above county officers  
who are now or may hereafter be compensated  
by salary shall not be entitled to the com-  
pensation provided in this section.'

"The question is, what does salary mean for  
purposes of the above section and accordingly  
which officers are entitled to the per diem  
allowance provided within this section?"

Section 138.010, RSMo, provides:

"1. In every county in this state, ex-  
cept as otherwise provided by law, there  
shall be a county board of equalization con-  
sisting of the judges of the county court,  
the county assessor, the county surveyor,  
and the county clerk who shall be secretary  
of the board without vote; except in any  
county having township organization, the

Honorable John D. Ashcroft

township assessor shall sit as a member of the board of equalization when the assessment of his township is under consideration or review.

"2. This board shall meet at the office of the county clerk on the second Monday in July, 1946, and on the second Monday of July of each year thereafter."

Section 138.020, RSMo, provides:

"The judges of the county court, the county surveyor, the county assessor, the county clerk, and those sitting as members as may otherwise be provided, shall receive five dollars per day for each day they shall be present and act in the performance of their duties as members of the county board of equalization; provided, that the above county officers who are now or may hereafter be compensated by salary shall not be entitled to the compensation provided in this section."

We will not attempt to cover in detail all the statutes relating to such officers and the various counties relative to such officers' compensation. If it is believed that there are particular problems with respect to any particular officer and his mode of compensation under the statutes relative to your question, such officer should request particular advice on the question through the office of his prosecuting attorney.

In general, most of the county court judges are on an annual compensation basis. See Chapter 49, RSMo. County surveyors are generally paid on a fee basis. See Chapter 46, RSMo. County assessors are paid on an annual salary basis. See Chapter 53, RSMo. County Clerks are paid on an annual compensation basis. See Chapter 51, RSMo. Township assessors are paid by fees. See Chapter 65, RSMo. The above is a general statement, however, and should be considered in light of our previous holdings that where the legislature provides that such officers are paid by fees or by fees and salary and not by salary alone, the officer is entitled to the per diem as a member of the board of equalization.

We held in our Opinion No. 37 dated August 13, 1946, to Harned, that where the officer receives fees as well as salary he is not "compensated by salary" within the meaning of Section 138.020 and is, therefore, entitled to the per diem.

Honorable John D. Ashcroft

We previously held in Opinion No. 4 dated October 17, 1952, to Baker, that county judges who received compensation on the basis of their attendance as members of the county court are entitled to pay for their services as members of the county board of equalization even though both services are rendered on the same day. We believe the same logic follows with respect to other officers who receive compensation not consisting solely of salary. Officers who receive only salaries are not entitled to the per diem allowance provided in Section 138.020.

In our view the terminology "compensated by salary" as used in Section 138.020 means compensated only by a set or fixed sum for the performance of the duties of the office which they hold.

With respect to city members of such board whose membership is authorized by Section 138.015, RSMo, we enclose our Opinion No. 88 dated June 2, 1966, to Conley, which holds that such city members are entitled to the per diem provided for in Section 138.020, RSMo.

#### CONCLUSION

It is the opinion of this office that members of the county board of equalization established pursuant to Sections 138.010 and 138.020, RSMo, are entitled to statutory per diem unless they receive only salary as compensation for the office which they hold.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 88  
6-2-66, Conley