

Filed: #27

May 25, 1933



Honorable Charles Farrar
Prosecuting Attorney
Dallas County
Buffalo, Missouri

Dear Mr. Farrar:

We have your letter of April 24, 1933, in which you request an opinion from this department on the question of whether or not the county court of your county is required to furnish you an office, stationery, etc., which letter is as follows:

"I am the prosecuting attorney of Dallas County, Missouri, and on account of lack of office room in the court house I am forced to rent an office elsewhere. Is the county required to furnish me an office, stationary, postage, telephone, fuel, etc.?"

Please give me an opinion on the above."

At the outset, we wish to state that the courts of this State in regard to furnishing offices, janitor service, stationery, postage and equipment for the county officers have adopted a liberal policy.

The first case on this question so far as we are able to find is the case of County of Boone v. Todd, 3 Mo. 140, in which the court held that where the county had not provided an office for its circuit clerk the court said:

"The county has no right to throw this burden on the clerk."

And further that the county was required to furnish him an office. Also, to the same effect is the case of St. Louis Co. Court v. Ruland, 5 Mo. 268, in which the court held that the county courts are bound to allow their clerks their expenses for fuel.

In the case of Saylor v. Nodaway County, 159 Mo. 520, under a statute providing that the necessary expenses incurred by the probate court "for books, stationery, furniture, fuel and other necessaries shall be paid by the county", the court held that the county court was compelled to pay the probate judge for postage stamps used in the discharge of his official duties.

In the case of Ewing v. Vernon County, 216 Mo. 681, 1. c. 692, involving what the recorder may have for equipment and expenses, the court said:

"There is not a word in the chapter relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it but when we read other provisions of the general statutes relating to building a court house and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish."

In the companion case of Ewing v. Vernon County, 216 Mo. 696, the court held that the sheriff's office is entitled to janitor service at the expense of the county and it is the duty of the county court to reimburse the sheriff for reasonable outlays for such services.

In Buchanan v. Ralls County, 283 Mo. 10; 222 S. W. 1002, the Supreme Court held that it was the duty of the county to furnish the county treasurer with suitable office space, heat, lights and janitor service under the statute, Section 12136, R. S. 1929, which provides that,

"The county court shall provide said county treasurer with suitable rooms, and secure a vault in the court house or other buildings occupied by county officers * * * * *."

In 46 C. J., p. 1018, it is said,

"The right of an officer to compensation for expenses incurred by him in the performance of an official duty must be found in a provision of the constitution or a statute conferring it either directly or by necessary implication, and the officer cannot recover compensation additional to the compensation fixed by statute for such expenses. But where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make

the expenditure out of his own funds and have reimbursement therefor, and where a public duty is demanded of an officer without provision for any compensation, the expense must be borne by the public for whose benefit it is done."

In many instances there are no statutory provisions for certain county and state officers in what they shall have for expenses and office equipment, but we find that it has been the attitude of the Supreme Court that where there is an express grant of power it carries with it such implied powers as are necessary to carry out the purposes of the authority granted.

It is an established rule of construction that a long continued interpretation of statutes by public officers charged with their execution, while not controlling upon the courts, is entitled to special consideration. In *Ewing v. Vernon County*, 216 Mo. supra, l. c. 689, the court said:

"Show me, said a great judge, what has been done under a deed and I will show you what the deed means. By the same doctrine, show me what by the concensus of what public official interpretation has been done under a statute, and I will show you what it probably means. Citing, *Scanlon v. Childs*, 33 Wisc. 663; *Packard v. Richardson*, 17 Mass. 144; *Donaldson v. Allen*, 213 Mo. l. c. 299 and 300."

In all of these cases the statutes have not been explicit on what should be furnished each county official, yet the courts have adopted a liberal view in the interest of efficiency of the offices and the officers in the performance of their duties.

It is our opinion that where the county court has not provided an office in the court house for a prosecuting attorney, he should not be required to furnish an office, stationery, fuel and postage out of his salary.

The Supreme Court said in *Ewing v. Vernon County*, 216 Mo., supra, l. c. 695:

"Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo. * * * * *

It must not be expected that this court will throw down statutory safeguards for the protection of the

May 25, 1933.

treasuries of the counties of this State, or in any way countenance looseness in their business affairs. But on the other hand we shall not construe our statutes so as to produce a harsh or ridiculous result and one not within the fair meaning of our laws.

The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

In 15 C. J., p. 505, it is said:

"In most jurisdictions it is held that a proper interpretation of the statutes authorizes the payment of necessary incidental expenses of the county officials, such as postage, stationery, mileage, and kindred expenditures from the county funds."

It is the opinion of this office that if the Prosecuting Attorney is not furnished an office in the court house or in some other building at the county seat by the county court where he might transact his official business, then he has a right to provide an office and fuel for same, and it is the duty of the county court to pay for same within reasonable limits.

It is our further opinion that stationery, postage and the telephone should be furnished by the county for his use in the transaction of the official duties of his office, and paid for out of county funds.

Yours very truly,

COVELL R. HEWITT,
Assistant Attorney-General.

Approved

Roy McKittrick
Attorney-General.