

PROBATE JUDGE: May obtain a reasonable allotment to care for necessary stenographic services provided he has complied with the provisions of the County Budget Law and the county has budgeted such allotment.

February 19, 1944

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copies*



Honorable Frank M. Frisby  
Acting Prosecuting Attorney  
Harrison County  
Bethany, Missouri

Dear Sir:

We are in receipt of your letter of February 15, 1944, requesting an opinion from this department, which letter is as follows:

"Mr. R. E. Moulthrop, Prosecuting Attorney of this County, has now entered active service in the Naval Reserve, and I am handling the affairs of the office for him. The county court of this county is faced with the problem of approving the budget of the Probate Court regarding the salary of the clerk of the court. The Probate Judge set up in his budget the item covering stenographic service in connection with the keeping of the probate records and the county court has asked me to obtain an opinion from you with reference thereto.

"I assume that many of the Probate Judges of the State are in the same situation and you no doubt have been bombarded with requests for an opinion in this matter.

"The Honorable George H. Hubbell, sent me copy of his brief which he has made upon the subject and in addition to that I would like to cite the cases of Harkreader -vs- Vernon County, 216 Mo. 696, and Motley -vs- Pike County, 233 Mo. 42. As authority in support of the obligation of the county court to pro-

vide necessary service under the statute in the Harkreader case, Judge Lamb goes into the question of personal service and decides that janitor service comes within the meaning of 'other necessities,' contemplated by the Statute and in the Motley case Judge Graves approves the opinion of Judge Lamb and goes farther and says 'that modern business as transacted by modern means and methods,' would surely cover stenographic service since records are now kept in the Probate Court in typewritten form.

"It is my personal opinion that in the light of the law as it now stands the court would extend the principles announced by Judge Lamb to also cover stenographic service necessary to properly keep the records of the probate court.

"I would very much appreciate an opinion from you upon this point."

The general rule of law, of course, is that an officer may not increase his compensation during his term, and that where certain official duties are prescribed by statute and definite salaries and fees provided for the officials, additional compensation may not be obtained for performing these official duties. *Maxwell v. Andrew County*, 146 S. W. (2d) 62; *Smith v. Pettis County*, 136 S. W. (2d) 282; *Nodaway County v. Kidder*, 129 S. W. (2d) 857.

Thus, under these rulings, since the law provides for a clerk of a probate court and provides for his duties, salary and compensation, additional compensation could not be secured to pay the clerk for the performance of these particular statutory duties. However, even in *Smith v. Pettis County*, supra, the court recognizes the right to other compensation where the work performed is not an official duty of the office. The act of typing and the act of stenographic work have a value in themselves and are not a part of the duties of a probate clerk as prescribed by statute, yet the typing of probate records has become by modern usage a neces-

sity to the carrying on of the business of the office. The typing of records is something separate and apart from the statutory duties of a probate clerk, and under modern needs is recognized as a necessity to the efficient carrying on of the work of a probate judge. For this reason, it is our belief that the question of whether the county court may make a reasonable allotment in its budget for stenographic services for probate judges is determined by the rules laid down in the following cases:

In *Rinehart v. Howell County*, 153 S. W. (2d) 381, Rinehart, Prosecuting Attorney of Howell County, sued the county for reimbursement of reasonable sums paid for necessary stenographic services incurred in the discharge of his official duties as prosecuting attorney of said county. The court said, l. c. 382:

" \* \* \* The case is to be distinguished from cases announcing the rule that officials may not receive compensation in addition to that authorized by law. *Maxwell v. Andrew County*, Mo. Sup., 146 S. W. 2d 621; *Smith v. Pettis County*, 345 Mo. 839, 844, 136 S. W. 2d 282, 285, \* \* \*. *Nodaway County v. Kidder*, 344 Mo. 795, 129 S. W. 2d 857, likewise involved income and did not involve bona fide outlays. The instant case was submitted on the theory, as disclosed by the stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in *Ewing v. Vernon County*, 216 Mo. 681, 695, 116 S. W. 518, 522(b). That case quoted with approval a passage from 23 Am. and Eng. Ency. Law, 2d Ed., 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories

and held a recorder entitled to reimbursement for outlays for necessary janitor service and stamps, stating: "Fees are the income of an office. Outlays inherently differ. \* \* \*"

The court thereupon cites various statutes authorizing and establishing salaries for stenographic services to prosecuting attorneys in the larger counties of the state, and goes on to say:

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic services in the discharge of the present-day duties of prosecuting attorneys in the communities affected--an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, \* \* \*."

In closing, the court states:

"The result might differ under live issues involving the County Budget Law, lawful action by the General Assembly covering the subject matter in said county, nonarbitrary action by the County Court, or the substantialness of the testimony as to the absolute necessity for the services."

In *Ewing v. Vernon Co.*, 216 Mo. 681, a recorder of deeds sought to recover from his county for the reasonable value of janitor service that he had hired to keep his office in a clean and comfortable condition for the use of the plaintiff, his clerks, and the public in general. The court allowed his recovery and stated, l. c. 693:

"Finally, we shall assume that among civilized people approved advances and results in scientific research make janitor services in public offices (i.e., the prevention of the propagation and spread of disease from filth), a necessity, \* \* \* \* \*"

"The statute relating to recorders ordains that he 'keep' his office, etc.; the word keep is one of wide and flexible meaning, one meaning being to maintain, to provide for. It involves the idea of continued effort in that line, i. e., that the office shall be carried on, enjoyed, etc. In this view of the case, the great breadth of the statutory word 'keep' permits of the notion that it was the legislative intent that the recorder of deeds should have the power to maintain and provide for his office in a reasonable way for the benefit of the public, \* \* \* \* \*"

See, also, *Harkreader v. Vernon Co.*, 216 Mo. 696.

The obtaining of this allotment as mentioned in the *Rinehart* case, supra, would, of course, also depend on a compliance with the County Budget Law, Section 10910, et seq., R. S. Missouri, 1939.

Honorable Frank M. Frisby

-6-

February 19, 1944

CONCLUSION

It is, therefore, the opinion of this office that a probate judge may obtain from his county a reasonable allotment to care for necessary stenographic services, provided he has complied with the provisions of the County Budget Law and the county has budgeted such allotment.

Respectfully submitted

ROBERT J. FLANAGAN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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