

COURT REPORTERS: In circuits where there are counties with more than forty-five thousand inhabitants the court reporter is not entitled to hotel and traveling expenses.

May 15, 1947

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Honorable Louis H. Schult  
Judge, 38th Judicial Circuit  
Caruthersville, Missouri

Dear Sir:

Receipt is acknowledged of your letter requesting an official opinion which reads:

"I would like to have your opinion on the following question:

"Section 13347 provides that every official court reporter of a circuit or a criminal court in counties having forty-five thousand inhabitants and less shall be allowed\* \* \* necessary hotel and traveling expenses while attending \* \* \* court at any place in the circuit in which he is appointed, other than the place of his residence therein, etc.

"The 38th Judicial Circuit is composed of two counties, one having over 45,000 inhabitants (Pemiscot 46,857) and one having less than 45,000 inhabitants (New Madrid 39,787).

"The Supreme Court in Woodside vs County, 308 Mo. 227, 271 SW 766 held that where each county in the circuit had a population of less than 45,000 inhabitants, the court reporter was entitled to his expenses in attending court.

"Would the court reporter of this circuit be entitled to his expenses from New Madrid County?

"And further would he be entitled to such expenses if he lived in New Madrid County. The reporter for this circuit lives in Portageville, New Madrid County, which is some twenty (20) miles from the town of New Madrid wherein circuit court is held, would he therefore be entitled to his expenses (mileage) in going from Portageville to New Madrid and return, since his residence is in that county."

In reading your request we observe two questions to be answered:

I.

May the official court reporter of the 38th Judicial Circuit, composed of Pemiscot County with a population of 46,857 inhabitants and New Madrid County with a population of 39,787 inhabitants, be reimbursed for sums of money actually expended for necessary hotel and traveling expenses while engaged in attending or traveling to and from any regular, special or adjourned term of court at any place in the circuit?

II.

When circuit court is held in New Madrid County, the county in which the court reporter resides, would he be entitled to traveling expenses in going to the town of New Madrid where court is held from his home at Portageville and return?

Section 13347, R. S. Mo. 1939, provides for allowances of hotel and traveling expenses incurred under the aforementioned conditions and reads as follows:

"Every official court reporter of a circuit or a criminal court in counties having forty-five thousand inhabitants and less shall be allowed and paid all sums of money actually expended only in necessary hotel and traveling expenses while engaged in attending any regular, special or adjourned term of court at any place in the circuit in which he is appointed, other than the place of his

residence therein, or while engaged in going to and from any such place for the purpose of attending such terms of court. Such moneys shall be paid out of the county treasuries of the respective counties in said district in proportion to their respective populations."

The leading case construing the above section is *Woodside v. Dent County*, 271 S. W. 766, 308 Mo. 227. In that case the question involved was whether or not under Section 12674, R. S. Mo. 1919, the court reporter of the 19th Judicial Circuit was entitled to be reimbursed for money actually expended for hotel and traveling expenses while engaged in attending court in the counties of the circuit other than his residence. The 19th Judicial circuit was composed of six counties having a total population of 87,959 but no county had a population in excess of 45,000. In holding that the court reporter was entitled to such reimbursement the Supreme Court en banc said at S. W. 1.c. 767:

"The only question presented is whether court reporters in circuits having a total population of over 60,000, and where each of the counties in the circuit has less than 45,000 inhabitants, are entitled to expenses provided by section 12674, R. S. 1919, in addition to salary. The section reads:

'Section 12674. Allowed actual expenses attending court.-- Every official court reporter of a circuit or a criminal court in counties having forty-five thousand inhabitants and less shall be allowed and paid all sums of money actually expended only in necessary hotel and traveling expenses while engaged in attending any regular, special or adjourned term of court at any place in the circuit in which he is appointed, other than the place of his residence therein, or while engaged in going to and from any such place for the purpose of attending such terms of court. Such moneys shall be paid

out of the county treasuries of the respective counties in said district in proportion to their respective populations. Laws 1919, p. 713.'

"The above section applies only to circuits consisting of two or more counties. The manner of apportionment and payment of this expense by the respective counties prescribed in the last sentence of the law indicates this intent beyond a peradventure. In no such circuit is there now, or was there at the time the law was passed, a county having more than 45,000 inhabitants. Consequently, no hardship arises, and no good reason appears why the plain, unambiguous terms of the statute should not be given a literal construction, and held to apply to every official court reporter of a circuit court in counties having 45,000 inhabitants and less. Appellant was a resident of Dent county within the judicial circuit for which he was the duly appointed, qualified and acting official court reporter. Circuit court was held in every county in this circuit, and every county in the circuit had less than 45,000 inhabitants, though the total population of the circuit was more than 60,000. The facts in appellant's case clearly bring him within the purview of sections 12670 and 12674, R. S. 1919, and he was entitled to recover the full amount sought.\* \* \* \* (Emphasis ours.)

The principal difference in the facts of the Woodside case from the situation presented in your first question is that in the Woodside case there was not a county in the circuit with a population over 45,000, while in the situation presented, one county in the circuit (Pemiscot) does have a population exceeding 45,000. This factual difference, we believe, is, in view of the language appearing in the Woodside case, a very important one to consider in determining the application of Section 13347, supra.

The court in the Woodside case did not directly rule on the question of whether or not Section 12674, R. S. Mo. 1919, which is identical to Section 13347, supra, would have entitled the

court reporter to receive hotel and traveling expenses had one of the counties of the circuit had a population exceeding 45,000 inhabitants. However, in reading the decision of the court it becomes apparent that the court wished to emphasize the fact that no county in the circuit had more than 45,000 inhabitants, and we believe the court even indicated that its decision might have been different had one or more of the counties within the circuit had more than 45,000 inhabitants for it said, "in no such circuit is there now, or was there at the time the law was passed, a county having more than 45,000 inhabitants. Consequently no hardship arises \* \* \*." The converse of this statement would be that there would have been a hardship existing had one or more counties of the circuit had a population exceeding 45,000.

The latter portion of the section being construed in the Woodside case, which is also the same as appears in Section 13347, supra, provides that the moneys allowed the court reporter for hotel and traveling expenses "shall be paid out of the county treasuries of the respective counties in said district in proportion to their respective populations." In this provision of the statute we believe that the Legislature has used the word "district" synonymously with the word "circuit", and that it was intended that the moneys for hotel and traveling expenses would be paid by the respective counties of the circuit in proportion to their respective populations. In other words all of the counties of a circuit are bound by the statute to pay their proportionate share of all the hotel and traveling expenses to which the court reporter is duly entitled. The liability of each county for its proportionate share is clear when no county in the circuit has more than 45,000 inhabitants, but such clarity vanishes when confronted with a situation such as the case at hand.

We ascertain in reading the first part of the statute that the Legislature has limited the liability of counties for any hotel and traveling expenses incurred by the court reporter to only those counties having 45,000 inhabitants or less. Therefore, in a circuit such as the 38th Judicial Circuit, Pemiscot County, which has more than 45,000 inhabitants, would not be liable for any portion of the hotel and traveling expenses incurred by the court reporter, at the same time New Madrid county, which at most would only be liable for a proportionate share, could not be assessed for the full amount of such expenses. The statute in question when applicable, certainly contemplates that the court reporter should be paid in full for hotel and traveling expenses to which he is duly entitled, and the last sentence of the statute clearly shows that the Legislature intended that all counties of a circuit would be liable for a proportionate part of such expenses, but it is our notion that such liability depends upon the counties comprising the circuit having no more than 45,000 inhabitants.

Consequently we are persuaded to the view that Section 13347, supra, does apply to a circuit in which one or more counties therein have more than 45,000 inhabitants, and if such is the case, the court reporter would suffer the hardship, which we believe that the court was mindful of in the Woodside case, of not being entitled to hotel and traveling expenses.

Therefore, in answer to your first question we are constrained to hold that the official court reporter of the 38th Judicial Circuit cannot be reimbursed for hotel and traveling expenses incurred while engaged in attending or traveling to and from any regular, special or adjourned term of court at any place in the circuit.

At this time we would like to point out that the only counties other than Pemiscot County which have a population in excess of 45,000 are Jackson, St. Louis, Buchanan, Greene and Jasper, and each of these counties comprise a separate judicial circuit. The 38th Judicial Circuit, which includes Pemiscot County, is composed of only two counties. Undoubtedly one reason for this is that Pemiscot County is not nearly so large as the counties aforementioned so as to constitute it a single judicial circuit. Although we believe that Section 13347, supra, has no application to the 38th Judicial Circuit, it can be readily seen that it would apply to the great majority of the circuits throughout the State, and the court reporters in such circuits would be entitled to reimbursement for hotel and traveling expenses under the conditions set forth in the statute.

The answering of your first question in the negative, we believe, also answers your second question in that we have concluded that the court reporter of the 38th Judicial Circuit would not be entitled to reimbursements for traveling expenses incurred while traveling to or from any term of court. However, we also believe that the words "other than the place of his residence therein", as used in the statute, has reference to the county in which the court reporter may reside and not to his actual place of abode. To pay the court reporter for mileage traveled while going from his home to the courthouse and return, both being within the same county, would in fact be paying him for traveling to and from work. We do not believe that such travel would be necessarily performed in the public service or in an official capacity so as to allow reimbursement for expenses incurred as contemplated by the statute.

What if the court reporter only lived a mile or two beyond the city limits of New Madrid, would he be entitled to mileage for going to and from work when court was being held in New Madrid? We think not.

In the case of United States v. Shields, 153 U. S. 88, 14 Sup. Ct. 735, the question involved was whether or not the United States District Attorney was entitled to mileage while going to and from his home on weekends. The place where court was being held was 58 miles from his home. The court in ruling that he was not entitled to such mileage said the following at S. C. l.c. 736:

"The only question now involved in the case is whether such an officer, whose place of abode is at a distance from the place at which court is held, is entitled to mileage for travel in going to his home every Saturday, and in returning to the place of holding court the following Monday morning, during the continuous session of the court.

"The appellee relies in support of his claim for mileage, and in affirmance of the judgment below, on that part of section 824, Rev. St., which provides: 'For traveling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.'

"This provision of section 824 has been modified by section 7 of the act of February 22, 1875, Supp. Rev. St. 66, which, in respect to mileage for attorneys, marshals, and clerks, enacts that 'from and after the first day of January 1875, no such officer or person shall become entitled to any allowance for mileage or travel not actually and necessarily performed under the provisions of existing law.'

"This being the provision of law in force as to mileage during the period covered by the claim of the appellee, can it be properly said that going to his home on Saturday afternoon and returning the Monday morning following was travel 'actually and necessarily performed?' It certainly cannot be held to be travel necessarily performed in

the public service. Mileage allowed to public officials involves the idea that the travel is performed in the public service, or in an official capacity. The appellee lived at Canton, Ohio, 58 miles from Cleveland, where the court was held; and he made the journey to and from his home once a week, for the purpose of spending Sunday with his family. If he is entitled to mileage for each one of these trips made during the uninterrupted session of the court, it is difficult to see upon what principle he would not be entitled to mileage for a daily trip of that sort, which would enable him to spend each night of the week at home. Suppose that his place of abode had been 10, 15, 20 or 25 miles from Cleveland, and instead of going home Saturday afternoon, and returning Monday morning, he had made the trip to his place of residence each afternoon of the court week, and returned the following morning. Could it be held that it was the true intent and meaning of congress that he should be allowed mileage for these daily trips? We think, clearly, not. Section 824, and the above-quoted act of February 22, 1875, will not admit of a construction which would give the right to mileage under such circumstances. There is, in principle, no essential difference between the claim for mileage on a daily trip to and from the officer's home, and a weekly trip, when performed for his own pleasure and convenience so as to spend Sunday at home. The travel, whether made daily or weekly, cannot be said to have been made in the character of a public official, or in the performance of a public service, but merely in a private and unofficial capacity." (Emphasis ours.)

In view of the foregoing we do not believe that the court reporter would be entitled to reimbursement for traveling expenses incurred while traveling from Portageville to New Madrid

and return during the time that court is being held in New Madrid.

CONCLUSION

It is, therefore, the opinion of this department that in a Judicial Circuit wherein a county or counties have more than 45,000 inhabitants, Section 13347, R. S. Mo. 1939 does not apply and the official court reporter of such circuit would not be entitled to reimbursement for sums of money expended for necessary hotel and travel expenses while engaged in attending or traveling to and from any regular, special or adjourned term of court at any place in the circuit. Nor in any event would the court reporter be entitled to traveling expenses for going from his home to the place where court was being held and return where both are in the same county.

Respectfully submitted,

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APPROVED:

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