

ASSESSORS: Counties of third class may not pay for
COUNTY COURTS: compensation of deputy assessors or clerks.

February 4, 1950



Honorable James D. Clemens
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"A question arises as to whether the County Court has the power to pay the salary of a clerk for the Assessor. The clerical work required of the Assessor has become such that the Assessor himself can no longer perform all of the clerical duties and still perform the principal duties imposed upon him by his office in making assessments. Further, it is felt that the office of the Assessor should be kept open to the public, and the Assessor cannot keep regular office hours and still cover the outlying districts of the County as he must do to properly assess the real and personal property of the County.

"The Assessor believes that he can best perform his duties if he has a clerk to assist in the clerical work and be present at all times in the office in the Courthouse. The County Court believes that such a clerk would aid to the Assessor's efficiency. Under these circumstances, is the County Court justified in obligating the County for the additional charge of hiring such a clerk for the Assessor?

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"Your opinion of April 29 concerning the hiring of extra stenographic help by a County Assessor has been carefully studied, but that opinion is based on a different situation in that there the question involved the hiring of extra stenographic help, rather than basic clerical help. It will be appreciated if you will give your opinion concerning the question outlined above."

As pointed out in your request, this department, in an opinion rendered to Mr. J. W. Thurman, Prosecuting Attorney of Jefferson County, dated April 29, 1949, held that county courts in counties of the third class may in their discretion reimburse a county assessor for necessary stenographic hire. As mentioned in your request, the opinion related only to stenographers and did not pass upon the question of the pay of deputies.

The question you have presented is whether the county court may pay the salary of a clerk for an assessor of a county of the third class, such as Pike County. Section 5, Laws of Missouri, 1945, page 1782 (Section 11000.4, R.S.A.), provides as follows:

"Every assessor, except in the City of St. Louis, may appoint as many deputies as he may need, to be paid as provided by law. Each deputy shall take the same oath and have the same power and authority as the assessor himself. The assessor shall be responsible for the official acts of his deputies." (Emphasis ours.)

In the case of State ex rel. Hackmann, 305 Mo. 342, our Supreme Court held that a general statute relating to compensation of "deputies" of an assessor included the compensation that was to be paid the clerks in the assessor's office.

A review of the statutes relating to assessors and their deputies in counties of the third class discloses no provision for the pay of such deputies. It will be noted that in counties of the second class it is specifically provided as to how deputy assessors may be paid (Laws of Missouri, 1945, page 1552, Section 10996.13, R.S.A.). In the case of Alexander v. Stoddard County, 210 S.W. (2d) 107, the Supreme Court held that the county was not liable for the payment of a deputy hired by a county treasurer and ex officio collector because the statutes relating to the

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office of collector simply provided that the deputy should be paid out of the fees collected by the officer. The court reviewed the earlier cases relating to the right of a county officer to be reimbursed for necessary outlay in the conduct of his office. The court then pointed out that, under the statutes in question, "whether they do or do not authorize such deputies, they plainly indicate the source of their pay and limit it to 'fees and commissions earned and collected by such officer only and not from general revenue.'" The same situation is present in the instant case because the Legislature has specifically provided that the deputy assessors and clerks shall "be paid as provided by law."

As there is no provision by law for the payment of deputy assessors and clerks in counties of the third class, we believe that the county court could not obligate the county for the payment of the compensation of said employees. What was further said in the Alexander case, supra, is especially applicable to the facts which you present. The court, through Judge Barrett, said, l.c. 109:

"In any event the legislature has the power to fix and limit the salaries of deputies and 'As a general rule compensation for services rendered by assistants, deputies, and other employees can be allowed directly to them or to their superiors only as authorized by law; and where no provision is made for the payment, or for the appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement. * * * Under other statutes deputies are to be paid by the principal out of the fees received by him in excess of the amount which he is to retain for himself, and the county is not liable for the salaries of such deputies.' * * *"
(Emphasis ours.)

Therefore, it appears that while an assessor of a county of the third class may employ as many deputies as he may need, still the county court may not pay for said deputies out of county funds, but said deputies must look to the assessor for their compensation.

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CONCLUSION

It is, therefore, the opinion of this department that county courts of counties of the third class may not pay the compensation of a deputy assessor or clerk.

Respectfully submitted,

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APPROVED:

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