

PROSECUTING ATTORNEYS: Prosecuting Attorneys may be reimbursed for actual and necessary traveling expenses in the investigation of crimes and the county court has authority to pay such expenses.

August 7, 1951

8-7-51



Honorable R. M. Gifford
Prosecuting Attorney
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Milan, Missouri

Dear Sir:

You have requested an opinion of this office in the following letter:

"I would appreciate your opinion as to whether or not the prosecuting attorney of a county of the third class, who might leave the state for the purpose of investigating certain facts relative to a crime committed within the county and state where the circumstances would lead him reasonably to believe that such investigation would terminate in the filing of an affidavit charging a particular person or persons with having committed a felony therein, would be entitled to reimbursement by the county court for necessary expenses incident thereto where the budget submitted by the prosecuting attorney to the county court included an item for investigation of criminal offenses and where the county court in that instance had approved such budget.

"It is my intention that your opinion include the above factual situation also with reference to such expenses and travel within the state but outside of the county."

It has been previously said in an opinion of this department on January 23, 1947, that prosecuting attorneys may be reimbursed for actual and necessary traveling expenses in the

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investigation of crimes and the county court is authorized to provide for such expense. This opinion, however, did not consider whether the travel was to be made within or without the State of Missouri. In the present county budget law for counties of the third class in the classification of proposed expenditures, Section 50.680, RSMo 1949, Class 4 thereof reads as follows:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

Class 4 of Estimated Expenditures, Section 50.710, RSMo 1949, reads as follows:

"Pay or salaries of officers and office expense. List each office separately and the deputy hire separately. (County clerk shall prepare estimate for the county court but his failure does not excuse the court.)"

It therefore appears that under this class, Class 4, the county court is authorized to expend funds for the actual expenses incurred by a county prosecutor of a class three county. The most relevant cases that we have found in regard to this matter are Rinehart v. Howell County, 153 S.W. 2d 381, and Bradford v. Phelps County, 210 S.W.2d 996, which are in regard to the stenographic expenses of prosecuting attorneys and not in regard to the expenses of travel and other personal expenses of the prosecuting attorney. Since they relate however to office expense, we believe a reasonable inference can be made that the court would conclude likewise in a claim for actual travel expense of a prosecuting attorney. In the Rinehart case, supra, it was held that the prosecuting attorney could be reimbursed for a reasonable sum paid for necessary stenographic services. The court there stated at l.c. 382, 383:

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" * * * 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. 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.'

In *Bradford v. Phelps County*, 210 S.W. 2d 996, 1.c. 1000, the court said as follows:

"(8) Of course, the Legislature could have provided for salaries for stenographers of prosecuting attorneys in counties of the class including Phelps County, quite as have been provided by statute in counties of other classification. For example, see *Laws of Missouri, 1945*, pp. 574, 578, and 583, *Mo. R.S.A. Secs. 12906 et seq., 12957 et seq., 13547.353 et seq.* The Legislature has not done so. This does not mean the County Court of Phelps County should not, in the exercise of its discretion, make allowance for the expense of necessitous stenographic service to the prosecuting attorney. But, in the absence of legislation providing a salary or allowance for a

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stenographer or for stenographic service for the prosecuting attorney of Phelps County, the County Budget Law means the County Court of Phelps County has the power to make whatever allowance for stenographic service as it, in its discretion, may deem necessary with a regard to the efficiency of the prosecuting attorney's office, and to the receipts estimated to be available for that and other estimated expenditures, in short, to approve such an estimate as will promote efficient and economic county government. * * *

At l.c. 1001, the Court said:

"Attending the charge the county court's revision of the estimate was arbitrary and capricious, without good cause, and in effect in an abuse of discretion—we will summarize the evidence pertinent to these questions; and in compliance with Section 140(c), Civil Code of Missouri, Laws of Missouri, 1943, at page 395, Mo. R.S.A. Sec. 847.140(c), we must make such an order as to us seems agreeable to law."

Later, at l.c. 1001, the Court said:

"We think it should not be held the evidence demonstrates the county court acted arbitrarily or capriciously, or otherwise in an abuse of its discretion."

(357Mo. 830)

These cases and the cases which are cited in them assume that amounts are to be paid for the necessary equipment, services and out of pocket expense of a public officer in the conduct of his office. Considering the Rinehart and the Bradford cases, it is for the county court to determine the reasonableness of the expenses of the prosecuting attorney and to make provision in the county budget upon the proper estimate of need having been furnished by the prosecuting attorney. In the event the prosecuting attorney believes the county court has acted arbitrarily in its determination of the necessity of the investigation and the expenses thereof, he may bring suit against the county to recover his necessary expenditures.

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With the exception of the references made herein, no statutory authority for the payment of the expenses of a prosecuting attorney has been found. Since there is no statutory provision either for or against such an allowance we believe that the same rule of reasonableness to be determined by the county court would prevail in regard to out-of-state travel expense as well as for traveling expense incurred for travel within each state.

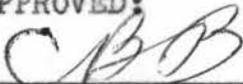
CONCLUSION

It is therefore the opinion of this department that actual expense and mileage incurred by a prosecuting attorney in the necessary fulfillment of the duties of his office should be provided by the county court in accordance with the reasonable discretion of that court. If the county court refuses to pay such expense and is arbitrary or capricious without good cause the prosecuting attorney may sue and recover for such actual reasonable expense from the county.

Respectfully submitted,

JAMES W. FARIS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JWfab