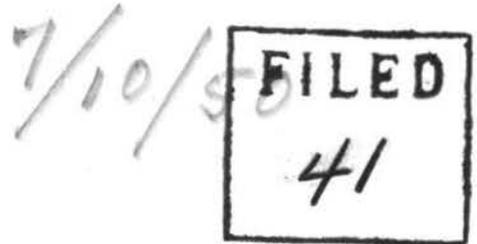


PROSECUTING ATTORNEYS:

Prosecuting attorneys of third class counties to receive that compensation provided by Sections 12939, 9701 and H. B. #297 as payment in full; ~~not~~ *not* entitled to any ~~part~~ *part* of fees collected.

July 7, 1950

Honorable W. H. Holmes  
State Auditor  
Jefferson City, Missouri



Dear Mr. Holmes:

This is to acknowledge receipt of your recent letter requesting a legal opinion of this department, which letter reads as follows:

"This department requests an official opinion on the following matter:

"It comes to our attention that some prosecuting attorneys in third class counties are receiving compensation from their county courts for services performed under H. B. 297, Laws of Missouri, 1949, in the sum of twenty-five per cent of the annual salaries permitted under House Bills 741 and 776, Laws of Missouri, 1945, plus twenty-five per cent of their fee collections under Section 13405, R. S. Mo., 1939.

"Our question is whether or not they would be entitled to receive back from the county, or to withhold, any part of their earnings under Section 13405 as compensation under H. B. 297?"

Section 1, Laws of Missouri, 1945, p. 1536, provides that the prosecuting attorney in counties of the third class shall receive for his services per annum a designated sum, ranging from \$1000 in counties having a population of 7,500 to \$3000 in those counties having a population of 30,000.

In addition to the compensation provided by this section, the prosecuting attorney is entitled to receive an amount equal to twenty-five per cent of such compensation for services rendered by him in the juvenile court of his county, as provided by Section 9701, Mo. R.S.A. 1939, which section reads as follows:

"When any reputable person, being a resident of the county, shall file a complaint with the prosecuting attorney, stating that any child in the county appears to be a neglected or delinquent child, the prosecuting attorney shall thereupon file with the clerk of the juvenile court a petition in writing, setting forth the facts and verified by his affidavit. It shall be sufficient that that affidavit be on his information and belief. It shall be the duty of the prosecuting attorney immediately thereafter to fully investigate all the facts concerning such neglected or delinquent child including its school attendance, home condition, and general environment, and to report the same in writing to the juvenile court, and upon hearing of such complaint to appear before the juvenile court and present evidence in connection therewith. The prosecuting attorney shall receive as compensation for the additional services and duties required under this law, in addition to the salary and fees now allowed prosecuting attorneys by law, an amount equal to 25 % of the annual salary of such prosecuting attorney, per annum, to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose: Provided, however, that this section shall be applicable only to counties of the third and fourth classes."

Under the provisions of House Bill 297, Laws of Missouri, 1949, the prosecuting attorney in a third or fourth class county shall receive additional compensation for his attendance and investigation made in connection with coroners inquest held in his county. Said Bill reads in part as follows:

"The prosecuting attorney in counties of the third and fourth class is hereby required to attend inquests by coroners in cases of death occurring by violence, and which may result in a charge of felony, and said prosecuting or circuit attorney shall make an investigation concerning said death and cause to be brought before the coroner any witnesses he may desire and shall be permitted by the coroner to assist in the interrogation of witnesses for the full development of the circumstances leading up to and resulting in said death, and for his information concerning any possible criminal charge that may grow out of the same. Prosecuting attorneys shall receive as compensation

for the additional services and duties required under this law, in addition to the salaries and fees now allowed such prosecuting attorneys by law, an amount equal to twenty-five per cent of the annual salary and fees of such prosecuting attorney, per annum to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose. \* \* \*

In a previous opinion of this department rendered to the prosecuting attorney of Ripley County on July 18, 1949, in discussing the increased compensation allowed prosecuting attorneys of third and fourth class counties under House Bill 297, the writer found it necessary to define the phrase "salaries and fees" found in the Bill. It was his conclusion that the word "salary" referred to that compensation which he later termed "base" compensation of the prosecutor provided by Section 12939, and now similar to the provisions of Section 1, Laws of Missouri, 1945, supra. By the word "fees" he referred to that compensation allowed the prosecutor under the provisions of Section 9701. It appears that a correct definition, and differentiation of this phrase found in House Bill 297, was made, and that it is still proper under the provisions of the present law.

In attempting to arrive at the entire compensation to which the prosecuting attorney of a third class county is entitled, it is necessary for us to repeat some of the references to the statutes heretofore made.

The "base" salary of the prosecutor is found by referring to the correct amount fixed by Section 1, Laws of Missouri, 1945, supra. To this amount is added a sum equal to twenty-five per cent, which constitutes the prosecutor's "fees" under the provisions of Section 9701. To the total of these two sums is added a further sum of twenty-five per cent of such total, as authorized by the provisions of House Bill 297.

In your letter, reference is made to Section 13405 as the statutory authority relied upon by some prosecutors of third class counties for their practice of withholding twenty-five per cent of all fees collected by them in their official capacities which fees they claim belong to them and not to their counties.

Section 13405, is that section of the Mo. R.S.A. 1939, which provides that prosecuting attorneys shall be allowed fees under certain circumstances, and the circumstances and the amount of fee in each instance is set out. No mention is made as to whom the fee belongs, i. e., to the county or to the prosecutor, and no mention is made as to what disposition the prosecutor shall make of it. Certainly this section could not be relied upon as authority and justification for withholding any fees or any portion

of same by prosecuting attorneys of third class counties, who have evidently misinterpreted the meaning of said section.

As noted above the entire compensation to be paid such prosecuting attorneys is provided by Section 1, Laws of Missouri, 1945; Section 9701, Mo. R.S.A. 1939, and the provisions of House Bill 297 of 1949. These laws prescribe the amount, mode and particular manner of payment of the prosecuting attorneys' compensation and such prosecutors are not entitled to any further compensation, or to be paid the compensation allowed them by law in any other manner than that noticed above. We believe this principle of law to be well established in Missouri and that the case of Nodaway County vs. Kidder, 129 S.W. (2d) 857, to be in point.

In this case a county judge of Nodaway County, Missouri, sought to collect fees and mileage for attending county court in excess of the fees and mileage allowed by statute. In its opinion, the Supreme Court said at l.c. 860:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. \* \* \* It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. \* \* \*"

Not being authorized by any statute to withhold as his own any fees collected by him in his official capacity, the prosecuting attorney must therefore account for same and pay them over to the treasurer of his county as provided by Section 3, Laws of Missouri, 1945, p. 1536, which section reads as follows:

"It shall be the duty of the prosecuting attorney, in counties of the third class, to charge, upon behalf of the county, every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he will immediately file with the clerk of the county court, and shall at the end of every quarter make out an itemized and accurate list of all fees in his office which have been collected by him, and one of

all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid--said report to be verified by affidavit--and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury."

CONCLUSION

It is therefore the opinion of this department that the prosecuting attorney of a third class county is entitled to receive as compensation for his services the total amounts provided by Section 1, Laws of Missouri, 1945, p. 1536 and Section 9701, Mo. R.S.A. 1939, and House Bill 297 of 1949, and that the prosecuting attorney is not entitled under the provisions of said House Bill 297 to retain, withhold or receive back from the county twenty-five per cent of the fees collected by him under the provisions of Section 13405, Mo. R.S.A. 1939.

Respectfully submitted,

PAUL N. CHITWOOD,  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

PNC:nm