

CIRCUIT CLERK: County Court cannot legally pay Circuit Clerk mileage
MILEAGE FEES: from the county seat, Carthage, Missouri to Joplin,
Missouri, when he attends court being held at Joplin,
Missouri, under Section 483.315, RSMo 1949.

June 22, 1951

Mr. Gene Frost
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Dear Sir:

This will acknowledge receipt of your request for an official opinion of this department. The pertinent part of this request is as follows:

"Jasper County has two divisions of court and two places of holding court within the county, at Carthage and Joplin. The County Court wishes to be advised whether or not they can legally pay the Circuit Clerk mileage from the county seat, Carthage, Missouri, to Joplin, Missouri, when he attends court that is being held at Joplin, Missouri."

Section 483.315, RSMo 1949, reads as follows:

"The clerk of the circuit court, in all counties of the second class, shall receive as compensation for his services, the sum of four thousand dollars per annum, to be paid in twelve equal monthly installments by the county on warrants drawn on the county treasury. He shall also be allowed to retain, in addition to said annual salary, all fees earned by him in cases of change of venue from other counties."

This statute we believe clearly and distinctly fixes the annual salary of, and fees to be retained by, the Circuit Clerk in class two counties, Jasper County being in class two.

The rule regarding salary, fees, mileage, etc., of public officers is that, absent any statute authorizing their payment,

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such compensation cannot be paid the officer seeking it.

A thorough search of the Missouri Revised Statutes, 1949, does not disclose any other statute which would authorize the payment of mileage by the county court to the Circuit Clerk of Jasper County for trips between Carthage and Joplin, Missouri, in attendance upon court when the same is being held in Joplin.

In Nodaway County v. Kidder, 344 Mo. 795, 129 S.W.(2d) 857, a leading case in this state with regard to collection of compensation and fees by a public officer, this being one wherein a judge of the county court collected daily compensation and mileage allegedly upon county business, the greater part of which was denied the appellant, our Supreme Court in its opinion at page 860 said:

* * * * *

"(8) It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackman, 305 Mo. 342, 262 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

CONCLUSION

It is, therefore, the opinion of this department that Section 483.315, supra, is the only statute authorizing the compensation of the Circuit Clerk of Jasper County as such. That the County Court cannot legally pay the Circuit Clerk mileage from the county seat, Carthage, Missouri to Joplin, Missouri, when he attends court being held at Joplin, Missouri.

Respectfully submitted,

APPROVED:



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