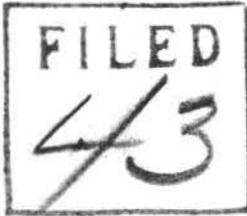


TREASURER: ) County treasurer not entitled to receive extra compensa-  
                  ) tion for her services performed in receiving, disbursing  
OFFICERS:     ) and keeping account of tolls and other revenues received  
                  ) from the operation of said bridge or bridges.



October 13, 1953

Mr. Robert L. Hyder  
Chief Counsel  
Missouri State Highway Commission  
Jefferson City, Missouri

Dear Mr. Hyder:

We render herewith our opinion based upon your request of October 1, 1953, which request reads as follows:

"Your official opinion is requested as to whether the County Treasurer of Camden County, Missouri, may lawfully be paid compensation in addition to that allowed her by law as County Treasurer for keeping the funds and records of the operations of a toll bridge constructed by the County Court by the issuance of revenue bonds.

"In this case the bonds were issued in 1934 by the County Court of Camden County and the bonds were purchased by the Reconstruction Finance Corporation. So far as I know, there was no extra compensation paid to the County Treasurer at that time for keeping the accounts relative to the toll bridge. In 1948, the County Court authorized the payment of \$2500 to Edith Nelson, the then duly elected and acting County Treasurer, for the extra work required to keep the accounts of the toll bridge fund and to pay the bills which constituted lawful claims against the fund.

"The Reconstruction Finance Corporation brought a proceeding in the Federal

Mr. Robert L. Hyder

District Court at Jefferson City, Missouri, against the Treasurer on June 25, 1948, being Case No. 332, alleging that such payment of extra compensation was unlawful because said officer was required by law to do all the work pertaining to her office, including that of keeping the records involving the toll bridge. A judgment was duly entered in that court, finding the issues for the Reconstruction Finance Corporation and directing that the defendant, Edith Nelson, take nothing for her alleged extra services.

"Recently the Commission acquired all the outstanding bonds and made the bridge toll free, the bridge being located on State Route 5 over a portion of the Lake of the Ozarks. The County Court of Camden County has stated that it desires to pay Miss Nelson extra compensation for her work in keeping the books of the toll bridge accounts during the past several years and in making the final audit of the books. It has been the position of the State Highway Commission, based on my advice to it concerning the outcome of the trial above mentioned, that the Treasurer can lawfully be paid nothing for such service and that the money involved should be paid to the State Road Fund since the Commission holds the outstanding bonds and will not cancel them until final disposition of all funds has been made.

"It is quite probable that other details may be necessary to a complete determination of the matter, and I will be glad to furnish same on request."

It is elementary that a public official must perform the duties of his office for the compensation fixed by law. For the performance of those duties he is entitled to that much -- no more, no less. It is not a matter of contract. *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857.

Mr. Robert L. Hyder

There is also substantial authority for the proposition that where a public official performs duties, which though not specifically enjoined upon him by statute still are germane to and incidental to his office, he is not entitled to additional compensation therefor. The law is stated in Mechem, Public Officers, Section 862, page 580, thus:

"An officer who accepts an office, to which a fixed salary or compensation is attached, is deemed to undertake to perform its duties for the salary or compensation fixed, though it may be inadequate, and if the proper authorities increase its duties by the addition of others germane to the office, the officer must perform them without extra compensation. Neither can he recover extra compensation for incidental or collateral services which properly belong to or form a part of the main office. An express contract to pay such extra compensation or an express allowance of it is void."

In *Nodaway County v. Kidder*, supra, the court said at Mo. l.c. 801:

"[5] 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. [State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.]

"It is well established that a public officer claiming compensation for official

Mr. Robert L. Hyder

duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 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.

"6 The duties performed by appellant, and for which the additional fee or salary and mileage, was paid, were with reference to matters pertaining to and relating to his official duties as presiding judge of the county court and said services were within the scope of said official duties. The work in which appellant was engaged was directly under the supervision of the county court. Public policy requires that a public officer be denied additional compensation for performing official duties.

"It has been held that employment as city attorney, for which a salary was paid, includes services rendered in connection with a special tax matter, and that compensation as city attorney covers such service, and that a city collector may not contract with such city attorney for additional compensation for services in such matters. Edwards v. City of Kirkwood, 162 Mo. App. 576, 579, 142 S. W. 1109."

In City of Decatur v. Vermillion, 77 Ill. 315, a poundmaster, who in order to be able to more efficiently perform his duties was appointed a special policeman, was held not to be entitled to additional compensation as a policeman. The court at l.c. 317 quoted approvingly the following passage from Dillon on Corporations, Section 172:

"\* \* \* to allow changes and addition in the duties of an office to lay the foundation for extra services, would soon introduce intolerable mischief. The rule, too, should be very rigidly enforced. The statutes of the legislature and the ordinances of our municipal corporations

Mr. Robert L. Hyder

seldom prescribe, with much detail and particularity, the duties annexed to public offices; and it requires but little ingenuity to run nice distinctions between what duties may, and what may not, be strictly official; and if these distinctions are much favored by courts of justice, it may lead to great abuse."

A contract between the public and the public official for the payment of such extra compensation or a gratuitous allowance of such extra compensation by the governing body is void and of no effect. Griffin v. Clay County, 63 Iowa 413; Adams County v. Hunter, \_\_\_ Iowa \_\_\_, 43 N.W. 208; Annotation. Validity of contract by officer with public for rendition of new or special services to be paid for in addition to regular compensation, 159 A.L.R. 606.

Let us look then at the factual situation presented by your request. Over a period of years the treasurer has kept account of the toll bridge receipts and disbursements, such bridge having been constructed and operated by Camden County under authority of Section 234.210, RSMo 1949. She has received the moneys collected from the operation of the bridge and has paid it out on warrants drawn by order of the county court. Although we assume there was never any agreement on the part of the county to pay her additionally for this service, the county court is willing and desires now to pay her extra compensation for this service.

We think it is not permissible to pay her any additional compensation for this service. Section 54.100, RSMo 1949, relating to the duties of the treasurer provides in part:

"\* \* \* He shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court."

The receipt and disbursement of toll bridge moneys and the keeping account thereof at least if the county court has made no other arrangements for the "fixing, collecting, segregating and allocating of the tolls and other revenues received from the operation of said bridge" under Section 234.220, RSMo 1949, we believe to be a part of the county treasurer's duty -- but, if not specifically so, it is at least germane to and incidental to such duties and does not under the above authorities entitle her to additional compensation.

Mr. Robert L. Hyder

Neither would the county court's allowance of such compensation under the authorities above cited be effective. Such authorities hold contracts providing for additional compensation in such instances void; and it would follow that a gratuitous allowance would also be void.

CONCLUSION

It is the opinion of this office that a county treasurer is not entitled to receive extra compensation for her services performed in receiving, disbursing and keeping account of tolls and other revenues received from the operation of a toll bridge or bridges constructed and operated by a county under authority of Section 234.210, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK/fh