

COUNTY BOARD OF EQUALIZATION: County judges, county clerk,
COUNTY JUDGES: county surveyor and sheriff
COUNTY CLERK: in third class counties may
COUNTY SURVEYOR: receive compensation as members
COUNTY SHERIFF: of County Board of Equalization.

August 14, 1947



Honorable David E. Impey
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Impey:

This is in reply to your letter of August 9, 1947,
requesting an official opinion from this department, which
reads as follows:

"I request an opinion as to the com-
pensation, if any, to be paid in this
county to the County Judges, the County
Surveyor, the Sheriff and County Clerk
for their services as members of the
County Board of Equalization.

In this county the Judges of the County
Court, the County Clerk and Sheriff are,
of course, on salaries. Section 11008,
Revised Statutes as amended by House Bill
467, 63rd General Assembly, approved
December 6, 1945 (Laws 1945, L.C. 1778),
appears to be controlling, but I am
puzzled by the fact that Shepard's
Missouri Citations, June Issue, 1947,
Volume XXXVII, No. 2, under Section
11008, cites 'Art. 3A Section 11008.3,
11008.4, etc., to 11008.34,' and indi-
cates an amendment in 1947 by Senate Bill
No. 143. I have requested and have been
unable to secure any such act or any in-
formation concerning it. Hence, this
request for your opinion."

This will advise you that Section 11008, Mo. R.S.A.,
is controlling in this matter. The reference made in
Shepard's Missouri Citations, June Issue, 1947, Volume
XXXVII, No. 2, under Section 11008, is to Senate Bill No.
143 of the 64th General Assembly, which amends, in part,

the act setting up the State Department of Revenue, as found in Sections 11008.1 through 11008.18. Said act was apparently placed at this particular place in the Missouri Revised Statutes Annotated merely for the purpose of classification, and has no bearing on, or reference to, the subject matter of Section 11008, which reads as follows:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, the county clerk, and those sitting as members as may otherwise be provided, shall receive five dollars per day for each day they shall be present and act in the performance of their duties as members of the county board of equalization. Provided, that the above county officers who are now or may hereafter be compensated by salary shall not be entitled to the compensation provided in this section."

Your attention is directed to an opinion rendered by this department to Mr. W. V. Mayse, Prosecuting Attorney of Harrison County, dated July 16, 1946, holding that members of the county court in third class counties, and the sheriffs of third class counties, are entitled to the compensation provided in Section 11008, Mo. R.S.A., when present and acting in the performance of their duties as members of the county board of equalization. We are enclosing herewith a copy of said opinion.

Section 2494.4, Mo. R.S.A., also expressly provides that members of the county court are entitled to said compensation, and reads as follows:

"In addition to the compensation provided in Section 1 of this act, the judges of the county court in counties of the third class shall receive five dollars per day for each day they shall act as members of the county board of equalization."

County surveyors in counties of the third class are compensated on a fee basis, as provided in Section 13425.1, Mo. R.S.A., and, therefore, the prohibition in Section 11008 against those officers compensated by salary is not applicable. It will also be noted that Section 13425.1 expressly authorizes a county surveyor to receive \$5.00 per day for each day actually engaged in serving as a member of the county board of equalization. It is quite clear then that said county surveyor is entitled to receive said compensation as a member of the county board of equalization.

The remaining question concerns the clerk of the county court in counties of the third class. Said clerk is compensated by salary and, at first blush, it would seem that he is prohibited by Section 11008 from receiving said compensation as a member of the county board of equalization. However, Section 13441.18, Mo. R.S.A., relating to the collection of fees by the clerk of a county court in counties of the third class, expressly allows said clerk to receive and retain his per diem as Secretary of the county board of equalization. Said section provides, in part, as follows:

"It shall be the duty of the clerk of the county court in counties of the third class to charge and collect in all cases every fee accruing to his office by law, except such fees as are chargeable to the county including his per diem as secretary of the board of equalization. * * *"

Section 13441.18, supra, is a special statute and was enacted and made effective at a later date than Section 11008 (Section 13441.18 effective July 1, 1946; Section 11008 effective December 6, 1945), and is clearly controlling over that section. Therefore, said clerk of the county court is entitled to receive \$5.00 per day for each day that he is present and acts in the performance of his duties as secretary of the county board of equalization.

Conclusion.

It is the opinion of this department that the members of the county court, the clerk of the county court, the county surveyor and the sheriff of Texas County, a county of the third class, are entitled to receive \$5.00 per day for each day that they are present and act in the performance of their duties as members of the county board of equalization.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:ml/jy
Enc.