COUNTY JUDGES: No restriction in third class counties on number of times mileage may be charged for going to and returning from court.

September 24, 1947

FILED 95

FILED
95

Honorable Wm. H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Mr. Wessel:

This is in reply to your letter of September 19, 1947, requesting an opinion from this department, which reads as follows:

> "Can County Judges in a Third Class County receive mileage to and from their home to the Courthouse? Two of the Judges go back and forth every night. Can they receive mileage for this every day, under the provision 'necessary' traveling, or can they receive such mileage only once, that is, when they come to the Courthouse for the beginning of a session and then only again when they go home from the session? Or could they receive it every week, when Court is in session for longer than one week?"

The statute now in effect relating to the compensation and mileage allowance of judges of the county court of third class counties is Section 2494.3, Mo. R.S.A., which provides as follows:

> "In all counties of the third class in this state, the judges of the county court shall receive for their services the sum of ten dollars per day for each of the first five days in any month that they are necessarily engaged in holding court and shall receive five dollars per day for each additional day in any month

> that they may be necessarily engaged in holding court, and shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court. The per diem compensation herein fixed shall be paid at the end of each month and the mileage compensation shall be paid at the end of each month on presentation of a bill, by each of the respective county judges setting forth the number of miles necessarily traveled: provided, however, that this increase in compensation shall not become effective during any county judge's present term of office." (Underscoring ours.)

It will be noted that prior statutes on this subject contained certain restrictions with regard to the number of times such mileage could be charged. Section 2494, R.S. 1939, allowed five cents per mile in counties of 75,000 inhabitants or less, but provided that in counties of 20,000 inhabitants or less such mileage should be charged only once for each regular term and not over eight times per year for special or adjourned terms. Section 13402, R.S. Mo. 1939, allowed five cents per mile, but further provided that such mileage should be charged only once for each term of court.

However, when Section 2494.3 was enacted, no restriction was included which would limit the number of times such mileage may be charged by judges of the county court. Said section only requires that such charge be made for travel in going to and returning from the place of holding court. The statute is plain and unambiguous in its terms and must be given effect as written. St. Louis Amustment Co. v. St. Louis County, 147 S.W. (2d) 667, l.c. 669; State v. Phillips Petroleum Co., 160 S.W. (2d) 764, l.c. 769.

Of course, it is evident that by providing said allowance for each mile "necessarily traveled" the Legislature intended that amount to be available for only necessary travel in going to and returning from the place of holding court by the most usually traveled and shortest practicable route. Hitch v. United States, 66 Fed. 937; United States v. Nix, 189 U.S. 199.

Conclusion.

It is, therefore, the opinion of this department that Section 2494.3, Mo. R.S.A., imposes no restriction with regard

to the number of times judges of the county court in counties of the third class may charge mileage for necessary travel in going to and returning from the place of holding county court.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:ml