

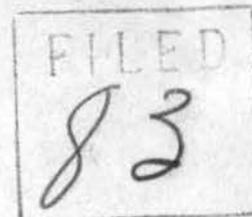
*Two copies
to Mr. J
Holmes*

CIRCUIT JUDGES:
COMPENSATION AND EXPENSES:

Circuit judge when holding court outside of his circuit is entitled to five cents per mile, and ten dollars per day.

December 3, 1948

12-6



Honorable Forrest Smith
State Auditor, State of Missouri
Jefferson City, Missouri

Dear Sir:

Attention: Mr. E. L. Pigg

This is in reply to yours of recent date wherein you request an opinion from this department on the question of what amount a special judge shall receive for his expenses while holding court in a county outside his circuit.

The law relating to salaries of circuit judges is found in Laws Missouri, 1945, page 1522. Section 4 of this Act, which provides for travel allowance of judges while in their own circuits, is as follows:

"Each judge of a judicial circuit composed of a single county which now has or may hereafter have less than 200,000 inhabitants and in which circuit court is held in more than one place and each judge of the circuit court whose circuit consists of more than one county, shall receive in addition to the salary provided for said judges in Section 2 of this act, the sum of ten cents per mile actually traveled and all other expenses incident to holding of all terms of court at any place in his county or circuit other than the place of his residence, and such sum of money for said expenses shall be paid out of the state treasury in monthly installments in the same manner as salaries of such judges are paid."

It will be noted that such judges are allowed ten cents per mile actually traveled and on other expenses incident to holding court at any place in his county or circuit other than the place of residence.

Section 5 of the same Act provides for expenses and compensation when such a judge is serving outside of his regular circuit. This section reads as follows:

"Each of the judges hereinbefore mentioned when temporarily serving, transferred or assigned as a judge of a court other than the one to which appointed or elected, said court to which temporarily assigned or transferred being held in a circuit other than the circuit in which such judge resides, in addition to the salary and expense money hereinbefore provided, shall receive from the state for his expenses mileage at five cents a mile for each mile traveled in going to or returning from the place where court is held and \$10.00 per day for each day so engaged."

We gather from your letter, and the memoranda attached thereto, that the question propounded has arisen on account of the two constructions placed on these sections. One construction is that the five cents per mile and ten dollars per day for each day engaged in holding court may only be paid to such judge, while the other construction is that such judge may receive, in addition to the said five cents per mile and ten dollars per day, expenses incident to holding court, which, under Section 4 of the Act, have been construed to include board and lodging.

The first construction seems to be based on the fact that the lawmakers used the language in Section 5, "shall receive from the state for his expenses mileage at five cents a mile * * * and ten dollars per day * * *" The other construction is on account of the language used in said Section 5, which says, "in addition to the salary and expenses hereinbefore provided * * *".

In the case of Whelan vs. Buchanan County, 111 S.W.(2d) 177, 180, the court stated a rule of statutory construction which we think would be applicable here. It is "statutes relating to the same subject are to be construed together and, if possible, harmonized and effect given to all provisions." These different sections of the statute which we have been considering deal with one subject matter, that is; salary and expenses of circuit judges.

The lawmakers, in framing Section 5 of this act, used the word "expenses" before the word "mileage". This word as used in this section and without any punctuation tends to confuse one in trying to construe the Act. However, in order to give each section of the Act a meaning and harmonize the entire Act we think that the lawmakers intended that the compensation provided for in Section 5 of the Act, that is, five cents per mile and ten dollars per day was to be the full compensation for expenses for the judge while holding court outside of his circuit. To place the other construction on this Act would allow such judge double

mileage and double expenses which we do not think the lawmakers intended to do. We also think this construction is in harmony with the general rules of statutory construction and that said Section 5 is especially applicable to compensation of judges when they are serving in a court outside of their own circuit.

CONCLUSION

From the foregoing, it is the opinion of this department that a judge, who is temporarily serving as a judge of a circuit court in a circuit other than the one in which he is appointed or elected, is entitled, for expenses, five cents per mile for each mile traveled in going to or returning from the place where court is held and ten dollars per day for each day so engaged, that this compensation is in addition to the regular salary of such judge to which he is entitled under Section 2 of the Act relating to salaries of circuit judges.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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