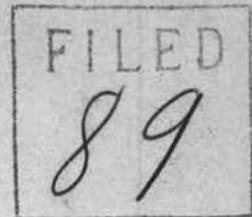


OFFICERS:  
FEES:  
PROSECUTING  
ATTORNEYS:

Prosecuting attorney is not entitled to fee for preparing transcript of bond issue voted for bridge improvement by county.



March 26, 1948

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Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"I wish your official opinion on the following proposition:

"Can the Prosecuting Attorney of a County under Township organization and the County Court of such County enter into a contract whereby the Prosecuting Attorney shall be paid a designated fee for preparing the transcript of the bond issue covering bridge improvement bonds approved by more than two-thirds of the legal voters in said County, voting upon said bond issue?

"I am Prosecuting Attorney of Carroll County. On March 23rd, 1948, more than two-thirds of the qualified voters, voting at an election held for that purpose voted in favor of the issuance of \$100,000.00 in bonds to be issued by Carroll County for the construction and reconstruction of County bridges. The election was held pursuant to the provisions of Article V, Chapter 16, R. S. Mo. as repealed and re-enacted by the Laws of Missouri, 1945, page 598 et seq and Section 8686, et seq of Article 6, Chapter 16, Revised Statutes of Missouri, 1939, as repealed and re-enacted under Section 8606 Laws Missouri, 1945.

"May I as Prosecuting Attorney contract with the County Court for a fee for the preparation

of the transcript of the proceedings showing the legality of the bond issue?"

Section 12944, R. S. Mo. 1939, referring to the duties of the prosecuting attorney, provides, in part, as follows:

"He shall \* \* \* represent generally the county in all matters of law, \* \* \*."

Since it is necessary that the validity of the election authorizing the issuance of the bonds be determined before such bonds can be issued and negotiated, we believe that the above quoted portion of Section 12944 places upon the prosecuting attorney of the county the official duty of preparing the transcript of the proceedings authorizing the issuance of such bonds.

In the case of State ex rel. v. Affolder, 214 Mo. App. 500, the Springfield Court of Appeals held that it was not the official duty of the prosecuting attorney to look after the legal phases of a bond issue voted for road purposes by Duck Creek Township, in Stoddard County. The court said, l. c. 505:

"Was it the duty of the prosecuting attorney to render the services which plaintiffs rendered? Sections 736 and 738 prescribe generally the duties of the prosecuting attorney. There is nothing in these sections which may be said to place upon the prosecuting attorney the duty of looking after this bond issue. There are other sections prescribing duties in particular cases, but the sections, supra, cover the fields generally. The bond issue of Duck Creek township was not a matter of county wide concern. It was a matter that affected that township only. \* \* \*"

The court further said, l. c. 506:

" \* \* \* Since there is no statute directing generally that the prosecuting attorney shall act for the township in counties under township organization, it is our conclusion that it was not the official duty of the prosecuting attorney to render the services which plaintiffs rendered."

Section 12944, supra, does place upon the prosecuting attorney the duty of acting for the county, and we believe that the

holding in the Affolder case, supra, is authority for holding that it is the official duty of the prosecuting attorney of the county to handle the legal phases of a county bond issue.

It is a well established principle of law that a public officer shall not be paid any additional compensation for the performance of his official duties unless a statute specifically provides for such additional payment for the performance of such duties. The Supreme Court of Missouri, in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, l. c. 860, said:

"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. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645.

"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."

#### CONCLUSION

It is the opinion of this department that a prosecuting attorney has, as part of his official duties, the duty of handling the legal phases of an election at which the county votes road bonds, and he has the duty of handling the legal work necessary to the issuance of such bonds.

It is further the opinion of this department that a prosecuting attorney has no authority to enter into a contract with

Honorable D. D. Thomas, Jr.

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the county court whereby the prosecuting attorney is to be paid for preparing the transcript of a bond issue covering bridge improvement bonds of a county.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

*J. E. T.*

CBB:HR