

1976 S.C. Op. Atty. Gen. 353 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4497, 1976 WL 23114

Office of the Attorney General

State of South Carolina

Opinion No. 4497

October 18, 1976

*1 The Honorable L. P. Booth
Chairman
Sumter County Council
Sumter, South Carolina 29150

Dear Mr. Booth:

Your letter of September 23, 1976, in which you ask that we advise you of the policy with respect to contribution by counties 'to help defray expenses' of Circuit Judges, has been referred to this Office for reply.

Article 5, Section 12, of the Constitution of this State provides that:

'The Justices of the Supreme Court and the Judges of Circuit Court shall receive compensation for their services to be fixed by law, . . . , nor shall they be allowed any fees or perquisites of office.'

Section 129 of the 1976-77 State Appropriations Act (hereinafter the Act) also provides, in part, as follows:

'That salaries paid to officers and employees of the State, including its several boards, Commissions, and institutions, shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee; . . .'

The foregoing provisions state in plain language that the salaries paid to officers and employees of the State, which includes Judges and their secretaries, are in full for all services rendered to the State, and their salaries may not be lawfully supplemented by the counties.

However, the salaries of court reporters may be supplemented under a proviso to Section 4 of the Act. This proviso reads:

'Provided, that the salaries provided for court reporters shall be in full for all services to the circuit courts, excepts where specific appropriations are made by any of the counties in the respective circuits to supplement these salaries, and except for income derived by the said court reporters from transcripts.'

You specifically inquire as to whether counties may lawfully contribute funds to help defray expenses of the Circuit Judges. Your inquiry involves a determination of whether contributions by the counties to Circuit Judges for expenses, office or otherwise, constitute a perquisite of office within the meaning of the foregoing constitutional provision and Section 129 of the Act. These provisions state that no perquisites of office or employment shall be allowed in addition to the salaries paid by the State. The question then concerns what is meant by 'no perquisite of office or employment.'

The AMERICAN HERITAGE DICTIONARY defines 'perquisite' as 'a payment or profit received in addition to a regular wage or salary.'

BLACK'S LAW DICTIONARY, 4th Edition, similarly described 'perquisite' as 'emoluments or incidental profits attaching to an office or official position, beyond the salary or regular fees.'

It seems clear that the term 'perquisites' as used in Section 129 of the Act means some gain or profit to the State employee beyond the compensation by the State and, therefore, does not include the allowances made by the State for travel and office expenses which the employee has to pay. This meaning becomes clear when reference is had to the fact that, under Section 131 of the Act, provision is made for the payment to each Circuit Judge of the sum of \$25.00 per day as subsistence expense and fourteen (14) cents per mile for the use of his automobile.

*2 In addition to the foregoing, the State has now begun providing office furniture and equipment for Circuit Judges and one hundred (\$100.00) dollars per month for office expenses.

The foregoing allowances by the State, in addition to salary, to Circuit Judges for office equipment, office expenses, subsistence, and travel do not constitute perquisites of office because such allowances are provided by the State as a part of the remuneration for the performance of the duties of the office of Circuit Judge. See, e.g., McCoy v. Handlin, 153 N.W. 361 (S.D. 1915). It does not follow, however, that supplements to Circuit Judges by the counties of additional amounts to cover these items could be lawfully made.

Counties over the State have for a long number of years contributed funds to help defray the office expenses of Circuit Judges. In fact, the counties in many instances have paid the salaries of secretaries for the Circuit Judges. Recently, however, the State has adopted the Unified Judicial System and has assumed more and more of the expenses of its operation.

The Legislature has determined that twenty five (\$25.00) dollars per day plus the fourteen (14) cents per mile is the reasonable and proper amount for actual expenses while a circuit judge travels. The alternative for the Legislature was to provide for the travel expenses to be itemized. See, McCoy v. Handlin, supra. In light of the Legislature's determination of expense reimbursement under Section 131 of the Act, for a Circuit Judge to receive any additional amount for travel expenses would necessarily be a perquisite of his office.

The State has also included in the Appropriations Act, Section 4 (Judicial Department), sufficient sums to allow each Circuit Judge one hundred (\$100.00) dollars per month for office expenses and has provided necessary office furniture and equipment. The one hundred dollars, of course, is merely to allow the Circuit Judge enough money to purchase those everyday items necessary to run his office. The one hundred dollars was not intended to be for, nor is it sufficient for, the payment of rent and utilities, or the furnishing of a library.

In addition to salaries and travel expenses, the State, as seen from above, now provides an allowance for office expenses for Circuit Judges and has provided office furniture and equipment. These are now a part of the regular allowances by the State for the office. We must assume that the General Assembly considered the various allowances for office expenses to be reasonable and to be uniformly applied throughout the State. See, Section 126 of the Act. If counties may supplement the allowances fixed by the State for office equipment, office expenses, and travel, the uniformity dictated by the Constitution will be destroyed and the remuneration to be paid to the Circuit Judges will ultimately depend upon the success of each individual judge in securing funds from the local governments.

*3 The alternative to the lump sum payment for office expenses is a system by which the Circuit Judge would itemize his office expenses and be paid accordingly. The Legislature has adopted the lump sum payment of one hundred (\$100.00) dollars per month and thereby established that amount as being reasonable and proper. Any additional sums contributed by a county would be a perquisite of office.

In summary, since the General Assembly has fixed the salary and allowances for office equipment, office expenses, subsistence and travel for Circuit Judges, any supplements by the counties for these items would be 'perquisites' within the meaning of the Constitution and the statute and, therefore, unlawful, since they would be beyond the salary and allowances so fixed by the General Assembly.

Counties may not, therefore, lawfully supplement the State allowances to Circuit Judges for office equipment, office expenses, subsistence or travel. Neither may counties lawfully supplement the salaries for secretaries of Circuit Judges.

The question of a county providing office space, utilities and a library remains. These actual expenses of office are not perquisites (McCoy v. Handlin, supra) in that these expenses have not been provided for by State appropriations. The counties have the right and, indeed, the responsibility to furnish reasonable but adequate office space and utilities; and if the county wishes, it may provide the Circuit Judge with the use of a legal library.

Very truly yours,

Daniel R. McLeod
Attorney General

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