Dyer, David P. vs. Thompson, Alonzo; 1867 Cole Co #1 Cir. 274/12

100/15

· Writ of mandamus
· mandamus ordered – D should be paid for making appendix to senate record

State of Missouri
on the relation of
David P. Dyer Pltff
&
Alonzo Thompson
State Auditor Deft

In the Supreme
Court of the
State of Mo
at Jefferson City
July Term 1867.

To the Honorable the Supreme Court of the State of Missouri.

Your petitioner David P. Dyer would respectfully state that on the day of January A.D. 1867 he was elected Secretary of the Missouri State Senate by the Senators chosen to the 24th General Assembly.

That after such election he took the oath of office and entered upon the discharge of the duties of the office and so continued until the 14th day of March A.D. 1867 at which time the regular session of the said 24th General Assembly adjourned.

Your petitioner says that by the laws of the State it was made his duty as such Secretary to keep a Journal of the proceed-ings of the Senate and to cause

a copy thereof to be furnished the public printer for the press. That the same has been furnished and that the said public printer has printed the same from the copy so furnished.

Your petitioner states that under the law he is entitled to fifteen cents per hundred words for such copy. That on the day of May AD 1867 he presented to Alexander Thompson State Auditor an account for the said Journal of which the following is a copy.

"State of Missouri

To W.P. Dyer Secy Mo Senate

For copying Journal proper (without appendix) of the regular session of the 24th General Assembly of the State of Missouri.

471 pages of printed matter
58 lines per page
11 words per line making
a total of words 382452
amounting to $573.67

A Appendix to Senate Journal

1020 pages of Bevier Type
1050 words per page making
a total 1.076.250
720 pages Pica
812 words per page
making a total of 584.640.
Total in Appendix 1.660.890.
Amounting to $2491.33
Journal Proper 573.67. $3065.00

Your petitioner states that upon the presentation of said account to the State Auditor he refused to draw his warrant upon the State Treasurer for the sum of Three thousand and sixty five dollars as it was his duty under the law to do. But drew a warrant for Five Hundred and Seventy three and 67/100 Dollars, amount of the first item in said account and refused and still refuses to draw his warrant upon the State Treasurer for the remainder of said account to wit the sum of Two thousand four hundred and ninety one and 33/100 dollars ($2491.33). Wherefore your petitioner

prays the court in view of all of the facts herein stated to award a peremptory writ of mandamus to the said State Auditor commanding and directing him to draw his warrant for the said last mentioned amount upon the State Treasurer and in favor of your petitioner.

D. P. Dyer.

State of Missouri
Ex Rel
D. P. Dyer Plf
P 3 -
Alonzo Thompson
State Auditor Defr

Petition for Mandamus

Filed July 3/67
N C Burch
Clk

State of Mo Ex Rel
D P Dyer Plff
p
Alonzo Thompson
State auditor Deft

Brief.

As to whether the appendix is a part of the Journal see Sec 21 Chapter 20 p 148 General Statutes.

See also Sections 16 + 20 Chapter 7 pp 81 & 82 General Statutes.

State ex Rel
V. P. Dyer
vs
Aloys Thompson
State auditor,

Filed July 3rd 1867
A C Burch
Clk

State of Missouri
on the relation of
D P Dyer Plff
vs
Alonzo Thompson
State Auditor Deft

In the Supreme
Court of Missouri
at Jefferson City July
Term 1867

The defendent Alonzo Thompson State Auditor comes and for answer to the petition filed in the above cause comes and states that he has examined the account presented by the said Dyer and finds the number of words as charged to be correct — But in view of the action of the Legislature last Winter in refusing to make appropriation for the pay of accounts heretofore presented and audited similar to the one presented by the Plaintiff herein the Respondent has not felt himself justified in auditing that portion of the plaintiffs account wherein he claims for the matter contained in the appendix

A. Thompson
State Auditor

State Ex Rel
D. P. Dyer
vs
Hugo Thompson
State auditor

Answer

Filed July 3d 67
N C Burch
Clk

In the Sup Ct Mo.
July 5, 1867.

State of Mo. Ex rel
D P Dyer
vs
A Thompson State Auditor

Pet. for Mandamus

Opinion of the Court.

The relator alleges in his petition that on the day of January 1867, he was elected Secretary of the Missouri State Senate; that after such election he took the oath of office and entered upon the discharge of the duties of the office and so continued until the 14th day of March 1867, at which time the regular session of the 24th General Assembly adjourned; that by the laws of the State it was made his duty as such Secretary to keep a journal of the proceedings of the Senate and to cause a copy thereof to be furnished the public printer for the press; that the same has been ~~done~~ furnished and that the public

printer has printed the same from the copy so made out and delivered to him by the relator.

It is further averred that the relator made out his account for copying the said journal and duly presented the same to the State Auditor for allowance, but that the Auditor refused to draw his warrant for ~~that~~ copying that part of the journal which included the appendix.

The answer of the Auditor admits the correctness of the account; but states that in view of the action ~~of the action~~ of the Legislature at its late session, he does not feel justified in auditing that portion of the account of the relator wherein he claims for the matter contained in the appendix.

The only question raised for the determination of the Court is, whether the appendix which the law authorizes and requires to be printed and bound with the journal, constitutes a part of the journal proper, so as to entitle the secretary to receive the same pay for making it

out as the law allows for copying the daily proceedings of the Senate. Section 16, Chap 7 of the General Laws makes it the duty of the Senate and House of Representatives to cause the journals of their respective houses to be copied and prepared for the press, without delay. Section 20 of the same chapter prescribes the amount which shall be allowed by the Secretary and Clerk of the respective houses for copying the journals for the press, and requires the State Auditor to audit and adjust the accounts when presented for such services.

Section 21, of Chapter 20, provides that the journals of each house shall be bound in a certain manner, and explicitly declares that the reports and public documents shall be contained within the journals under the head of appendix; and by section 28, the duty is devolved on the Secretary of the Senate and Clerk of the House of Representatives to furnish to the public printer, every day during

the session of the General Assembly, a copy of the journal of their respective houses, for the day preceding, till the whole journal shall be copied and delivered.

These last two sections must be considered together. Section 28. does not undertake to define what shall constitute the journal, but merely prescribes the daily duties of the Secretary and Clerk in transcribing and furnishing the proceedings of each house while in session.

But section 21, states without ambiguity, and with unquestioned clearness, that reports and public documents shall be contained within the journal, under the head of appendix. The appendix then must be taken to be a part of the journal. The law contemplates that the Secretary and Clerk shall furnish to the printer the reports and public documents, which make up the appendix, and are included in, and form a part of the journal, in the same manner as they

do the daily proceedings of the Legislature, and when they perform that duty, they are entitled to pay for all alike. It stands admitted on the record that the work was done by the petitioner and a peremptory mandamus must therefore be ordered. Judge Holmes concurs, Judge Fagg not sitting.

Davis Hagner.

July T. 67

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State ex rel Dyer.

v

Thompson, Auditor.

Opinion of the Court. Hagner.

Filed July 6th 67

A C Burch

Clk

Mandamus ordered