

COUNTY COURT: County officers in counties of the fourth
OFFICERS class are unauthorized to purchase supplies
for their respective offices.

FILED

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February 3, 1949

Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

2-8

Dear Sir:

This will acknowledge receipt of your request for
an opinion which reads:

"Please furnish me at as early a date as
possible an opinion on the following:

"Does a county court in a fourth class
county have the right to deny various of-
fice holders the right of purchasing their
own supplies and create a central purchas-
ing agent, or is it the inherent right of
the various officials in this county to
purchase their own necessary supplies in
accordance with their needs?"

"In as much as, the county court is attempt-
ing to create this purchasing agent and is
attempting to slash budgets of the various
county officers, I would appreciate as early
reply as possible."

We regret to have withheld rendering this opinion
before this date but your request raises a very close and
important question and effects not only one officer but
many, as well as counties.

McDonald County has been delegated by the Legislature
to be a county of the fourth-class (See page 1801, Laws of
Missouri, 1945).

The county court is merely an agent of the county, possessing no powers except those conferred by statute. In *Jenson v. Wilson Township, Gentry County*, 145 S. W. (2nd) 372, l. c. 374, the court said:

" * * * A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. *State ex rel. Quincy, etc., Ry. Co., v. Harris*, 96 Mo. 29, 8 S. W. 794. * * *"

See also *State ex rel v. Oliver*, 208 S. W. 112, 202 Mo. App. 527, l.c. 535 and 536.

Section 36, Article VI of the Constitution of Missouri, 1875, gave the county courts jurisdiction to transact all county and such other business as prescribed by law. Said section reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

In view of such grant of authority, the Legislature apparently enacted what is now known as 2480, R. S. Mo. 1939, which has been in effect for many years and reads:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

In so far as we can determine, Section 2480, supra, has not been specifically repealed or repealed by inference or implication.

Section 7, Article VI, Constitution of Missouri, 1945, replaces Section 36, Article VI, Constitution of Missouri, 1875, and provides that the County Court shall manage all county business as prescribed by law. Section 7, Article VI, reads:

"In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

Said provision does not have the effect of repealing any statute not in conflict therewith. For instance, Section 2480, supra, in no way conflicts with Section 7, Article VI, supra, and therefore it is still in full force and effect. Neither does the stripping the county clerk of judicial powers that were formerly vested in said county (Section 1, Article V, Constitution of Missouri, 1945) take away such authority as vested in the county under Section 2480, supra.

A careful search of the statutes show that in some counties coming within certain classifications of counties other than Class 4, the county court or some person delegated by said county, is by law specifically required to do the purchasing for the various county officials. Sections 2509, 2510 and 2511, R. S. Mo. 1939, are applicable only to counties now or hereafter having not less than 70,000 inhabitants, nor more than 90,000 inhabitants as shown by the last Federal Census.

These statutes further require that supplies for county officers be contracted for by the county court, and the Legislature enacted Section 2512, R.S. Mo. 1939, which makes it a misdemeanor for violating any of the foregoing statutes. Under Section 2511, supra, no county officer may purchase any supplies not contracted for by the county without the approval of the county court, neither can any purchase be made for supplies that have not been contracted for by the county court without the approval of said court. Section 2509 reads:

"It shall be the duty of the judges of the county court in each county of this state to which this article applies annually on or before the first day of November, to determine the kind and quantity of supplies required by law to be paid for out of the county

funds, that will be necessary for the use of the several officers of such county during the next succeeding calendar year, and to advertise for sealed bids and contract with the lowest and best bidder for such supplies. But, before letting any such contract, or contracts, the court shall cause notice that it will receive sealed bids for such supplies, to be given by advertisement in some daily newspaper of general circulation published in the county, such notice to be published on Thursday of each week for three consecutive weeks, the last insertion of which shall be not less than ten days before the date in said advertisement fixed for the letting of such contract, or contracts which shall be let on the first Monday in December, or on such other day and date as the court may fix between the first Monday of December and the first Saturday after the first Monday in December, next following the publication of such notice; Provided, that if by nature thereof or the quantity of any article or thing which any county officer, in any county of this state to which this article applies that the same may not be included in such contract at a saving to such county, then and in that event, such article or thing may be purchased for such officer upon an order of the county court first being made and entered as in this article provided."

Section 2511 reads:

"It shall hereafter be unlawful for any county officer in any county to which this article applies to purchase any supplies not contracted for as in this article provided, for his official use and for which payment is by law required to be made by the county, unless he shall first apply to and obtain from the county court an order in writing and under the official seal of the court for the purchase of such supplies, and in all cases where the supplies requested by such officer have been contracted for by the county

court as in this article provided, the order shall be in the form of a requisition by said officer addressed to the person, firm, company or corporation with whom or which the county court has made a contract for such supplies, and approved by the county court."

Also, Section 2513, as amended, page 833, Laws of Missouri 1945, vests similar authority in the county court, but like Sections 2509 and 2511, supra, such provision only applies to counties of the second class.

There is one instance we have in mind and possibly there may be other similar instances wherein the Legislature has given authority, so the decisions hold, to the sheriff to purchase necessary supplies for the county jail without the necessity of going through the county court. That is under Section 9193 and 9195, R.S. Mo. 1939, which read:

Section 9193. "There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county."

Section 9195. "The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

While the foregoing statutes do not in so many words say that the sheriff shall purchase necessary supplies for the jail, the courts have held in fact that they do authorize the jailer to purchase all necessary supplies to keep said jail in good condition. In *Kansas City Sanitary Co. v. Laclede Co.* 269 S.W. 395, the court said in construing Sections 12549 and 12551 which are the same as 9193 and 9195, R.S. Mo. 1939.

"Under Section 12549 the jail is required to be kept in good and sufficient condition and under Section 12551 the sheriff has the custody, keeping and charge of the jail. He, therefore, has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition, which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. Harkreader v. Vernon County, 216 Mo. 696; 116 S. W. 523."

Applying a well established rule of statutory construction "Expression of one thing in a statute is the exclusion of another," (See Kansas City Power and Light Company v. Smith 111 S. W. (2nd), 513, 342, Mo. 75) we are confronted with conflicting conclusions if we hold the foregoing rule applicable in construing the foregoing statutes wherein county officers in certain class counties or counties having a designated number of inhabitants, must have the county court purchase the necessary supplies for their respective offices as per contract or secure the approval of the county court if supplies are purchased that are not contracted for by the county court, then all county officers not coming within such classification may purchase their own supplies. If we apply the same rule to the statute authorizing the sheriff to purchase supplies for the jail, then all other county officers not given specific statutory authority to purchase supplies must have the necessary supplies purchased through the county court.

We must not overlook Section 2480, R.S. Mo. 1939, which is still in full force and effect and which gives the county court control and management of all property, real and personal, belonging to the county, direct authority to make purchases of real and personal property for use and benefit of the county and further authority to convey real and personal property of the county.

It is likewise true that all county officers are mere creatures of statutes and possess only such authority as given by the statutes and Constitution of this state and necessary implied power to carry out such expressing statutory grant of authority. (See Lamar Township v. City of Lamar, 261 Mo. 171 l.c. 189.)

Honorable James L. Paul - 7

Therefore in view of the foregoing authority vested in the county court to purchase supplies for county officers under and by virtue of Section 2480, supra, in the absence of any statutory authority given any county officer to purchase the supplies for the respective office for which he was elected or appointed, it is the opinion of this department that such supplies must be purchased by the county court.

Respectfully submitted,

AUBREY R. HAMMETT, JR.,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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