

MAGISTRATE COURTS: County wherein Magistrate Court is held is under a duty to furnish to the said Magistrate Court the facilities necessary for the holding of Court and the administration of the Court held in such county.

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Hon. Robert G. Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Kirkland:

We have your recent letter requesting an official opinion of this department. Said opinion request reads, in part as follows:

"Please furnish this office with an official opinion on the following question:

Is it compulsory that the County Court in a third class county issue a warrant to pay for law books ordered by and for the Magistrate Court of that county, the said law books being directly connected with the business and functions of the Magistrate Court?"

Section 7, Laws of Missouri, 1945, page 807 (Sec. 2811.307, Mo. R.S.A.) is the only statute which specifically provides for payment by the city or county of the necessary office expenses of the Magistrate Courts. Said section provides as follows:

"At the expense of the county the county court, or in the City of St. Louis the board of aldermen by ordinance, shall provide the court and its divisions and officers with proper court rooms and offices at one place in the city, and for the proper care thereof, and with heat, light, furniture, furnishings, office equipment, filing cabinets, typewriters, stationery, office supplies and proper books of account and record, dockets and printed forms of writs, and

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and whatsoever else may be necessary for the proper conduct of the business of the court."

The above quoted statute applies only to the City of St. Louis. However, the fact that a specific statute was enacted by the legislature for the purpose of declaring specific supplies and services necessary for the proper conduct of the business of the Magistrate Courts of the City of St. Louis does not preclude the counties from having the duty of paying the costs of supplies and services necessary for the proper conduct of the business of said Magistrate Courts in counties of the State outside the City of St. Louis.

In the case of Rinehart v. Howell County, 153 S.W. (2d) 381, the Supreme Court of Missouri in discussing the contention that since a statute provided that stenographers of prosecuting attorneys in certain counties should be paid by the county, and since no provision was made by statute for payment of such stenographers in other counties, the result must be that where no statute authorized payment by the county, the county was not liable therefor, said at l. c. 383:

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic services in the discharge of the present-day duties of prosecuting attorneys in the communities affected--an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's protection of the interests of the state, the county and the public. * * * *"

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Magistrate courts are courts of record, see Section 19, Laws of Missouri, 1947, page 241 (Sec. 2811.119 Mo. R. S.A.) and as such have the same general powers and authority of all courts of record unless such general powers and authority have been specifically withdrawn by an appropriate statute. Hence, statutes relating to Courts of Record in general should be read in conjunction with the statutes relating to Magistrate Courts, Laws of Mo. 1945, Section 1, page 806; (Sec. 2034, Mo. R.S.A.) provides as follows:

"The several sheriffs shall attend each court held in their counties, except where it shall otherwise be directed by law; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

The above quoted statute is similar to, though more comprehensive than Section 14, Laws of Mo. 1945, (Sec. 2811. 114 Mo. R. S. A.) page 765, which provides as follows:

"Every magistrate may hold court for the trial of all causes of which he has jurisdiction as often as may be necessary to meet the needs of justice, and may hold such court on any day, except Sunday, on which any cause may be set for trial, or any cause adjourned; and when so required the sheriff shall be present in person or by deputy and attend on said court."

By application of the two above quoted statutes to the Magistrate Courts it becomes apparent that the sheriff or his deputy must be present in said court and attend on said court whenever required to furnish stationery, fuel and other things necessary for the use of the court whenever ordered by the court. The words "whenever ordered by the court" and "attend on said court" are, in our opinion, capable of only one construction, namely, that the court shall decide what is necessary for the proper conduct of its business and the court will then order the sheriff to provide the same to it. This construction is further substantiated by Section 2035, R. S. Mo. 1939, which provides for the auditing and certification for payment of such accounts by the court as follows:

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"The court shall audit and adjust the accounts of the officer attending it, made pursuant to this chapter, and certify the same for payment."

And also by the case of State of Mo. ex rel. W. B. Hensick v. A. J. Smith, Auditor, 5 Mo. App. 427, wherein the court discussed such power and authority of the court under an early revision of Section 2035, R. S. Mo. 1939, which is the same in substance as the present statute. In this case the court said, at l. c. 429:

"* * * * The general law directs (Wag. Stat. 431, sec. 4) that all accounts for expenditures accruing in courts shall be paid out of the treasury of the county in which the court is held, in the same manner as other demands, and (Wag. Stat. 424, secs. 41, 42) shall be audited and adjusted by the court in which the services were rendered. That tribunal has the means of determining the correctness of the account, as to which the auditor can know nothing; and to that tribunal alone have the people delegated the power of determining what expenditures are necessary to carry on, with efficiency and decorum, the public business of the court. * * * * *
To hold otherwise would be to say that the people have committed to the auditor the power of suspending the session of any court in the city at his pleasure, which is manifestly absurd. * * * * *"

Substantially to the same effect, see State ex rel. McNeil v. St. Louis County Court, 42 Mo. 416, wherein the court said at l. c. 500:

"* * * * The general law directs all such accounts to be audited, adjusted, and certified for payment by the court in which the services are rendered and the articles furnished. Such tribunal is presumed to have the means of determining almost with positive certainty as to the correctness of the items of such an account.

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What necessity can be shown for requiring a claim thus audited and allowed to undergo an examination by the auditor? It will not be pretended that a claim for similar services in the County Court itself would have to pass through the hands of the same officer before the County Court would be authorized to order a warrant for its payment."

From the foregoing quoted statutes and cases it follows that it is for the court along to determine what things are necessary for its use and then to order the sheriff to furnish the same to the said court and after such things are furnished the court shall audit and adjust the account, then certify the same for payment.

Provision for the ultimate payment of the aforementioned accounts is made by Section 2102, Mo.R.S.A. (Reenacted Laws of Mo. 1945, page 812) as follows:

"All expenditures accruing in the circuit courts, county courts, magistrate courts, and probate courts, except salaries and clerk hire which is payable by the state, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

Therefore, as the above statute requires that all expenditures accruing in the circuit courts, county courts, magistrate courts and probate courts, except salaries and clerks hire, be paid out of the treasury of the county in which the court is held, in the same manner as other demands, it is apparent that all expenditures made by the magistrate court in the carrying on of its duties and business as a magistrate court must be borne by the county wherein the court is held.

The fact that the magistrate in the instant case has not complied with all the preliminary requirements before taking it upon himself to order the law books here involved would not of itself give rise to an estoppel against the said magistrate so long as the magistrate acted in good faith in determining that said law books were necessary for the proper conduct of the business of said magistrate court. A question of this nature was determined in the case of *Buchanan v. County of Ralls*, 283 Mo. 10, wherein the court held such question to be a question of fact, holding at l. c. 17:

"The evidence as shown by the record before us does not, in our opinion, justify an instruction on the theory of estoppel, nor

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upon the necessity of a demand by respondent upon appellant that it should supply her with a suitable office, before she was justified in renting an office elsewhere. It seems that all parties were familiar with the situation. No one was misled. * * * * *

It will be noticed that the above statutes and authorities provide that the county wherein such court is held shall pay all expenditures accruing in the Courts of Record of said county when such expenditures are incurred by said court for those things which are necessary to enable the court to carry on with efficiency the public business of the court; and that the courts alone have the power of determining what expenditures are necessary for the court to so carry on the business of the said court.

CONCLUSION

It is therefore the opinion of this department that a county court in a county of the third class is under a duty to issue a warrant to pay for law books ordered by and for the Magistrate Court of said county, when said law books are necessary for the proper and efficient transaction of the business of said court.

Respectfully submitted
Philip M. Sestric
PHILIP M. SESTRIC
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL *J. E. Taylor*

FMS:A