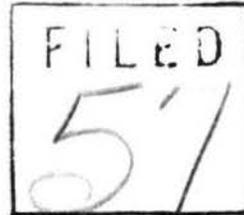


COUNTY COURTS:

OFFICERS:

The County Court is not authorized to pay attorney fees for defending the Collector in a civil suit charging official wrongdoing of the Collector. The defense of the suit is a personal matter and the County is not concerned.

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Mr. G. Logan Marr,
Prosecuting Attorney,
Morgan County,
Versailles, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 3, 1938, for an official opinion from this department, which is as follows:

"Herein is exhibit 'A', the petition filed against O. C. Roark, and exhibit 'B', the separate answer of O. C. Roark as Collector of Revenue of Morgan County, Mo. Mr. E. R. Evans filed a general denial the petition herein.

"This case is still pending on the docket and has not been heard yet.

"Mr. Roark had to hire an attorney to represent him, and this attorney, Mr. Bolinger filed this answer exhibit 'B'. Mr. Roark paid \$25.00 out of his own pocket, to Mr. Bolinger, as attorney fees. Mr. Roark presented a bill to the County Court for a refund of this \$25.00 Mr. Roark personally paid out for attorney fees.

"The County Court requested an opinion from my office if the County was liable for this attorney fee? I could find no law that the County was liable to

pay for an attorney for the collector under the Jones-Munger Law. It was my opinion that the County did not owe the fee. Mr. Roark presented his side of the case and the County Court requested that I get an opinion from the Attorney General.

"Mr. Roark has been threatened with several just suits as this by this plaintiff and other parties. This plaintiff filed another just such a suit, and the same is now up on appeal. These sales were made under the Jones-Munger Law, and under the law and the facts of this case, it is my opinion that this suit is a most frivolous suit, without any merits. Yet Mr. Roark is called upon to defend the same as a county official, and protect the funds in his care.

"Mr. Roark argued with the County Court that it was an unreasonable burden on him to expect him to hire his own attorney in these cases, since he was a county officer and was acting to protect the funds of the county. The Jones-Munger Law, evidently abolished the office of tax attorney for the collector, and failed to provide a substitute plan. I am in sympathy with Mr. Roark, and would like to see him reimbursed for these attorney fees, if there is any law for the county to allow the same. This is a precedent that we did not want to establish unless it was the law."

Your question involves the powers of the County Court.

The County Court is provided for by Section 36 of Article VI of the Constitution of Missouri, which states:

"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."

It has been held by the courts of this state that the County Court has no equitable nor common law power, but its powers are derived from the statute.

In State ex rel. v. Johnson, 138 Mo. App. 306, l. c. 314, the court said:

"The county courts of Missouri are creatures solely of statutory origin and have no common law or equitable jurisdiction (State ex rel. v. Madison County Court, 135 Mo. 323, l. c. 326)."

Section 12162, R. S. Mo. 1929, sets forth the power of the County Court with reference to auditing and settling claims, and among other things provides:

"The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; * * *."

The courts have construed the above section as authorizing the county to employ attorneys to represent the county in the recovery of county funds in instances where the county attorney refused to bring suit after being ordered to do so by the County Court.

Illustrative of the same is State v. Fulks, 296 Mo. 634, 247 S. W. 129. However, that was a case where the county itself was directly interested and on the refusal of the prosecuting attorney to file suit on behalf of the county for the recovery of several thousand dollars, the

county employed other attorneys who did bring the suit and who did recover the money. On appeal it was contended that the case should be reversed because the suit was prosecuted by someone other than the prosecuting attorney. In that case the Attorney General appeared as part of counsel for the county, his advent into the case being upon the filing of an amended petition. The court held that under that state of facts the case should not be reversed on account of the fact that the prosecuting attorney had not prosecuted the case for the county.

That case, however, is not authority for the employment of outside attorneys by the county to represent and defend the County Collector when he is sued on account of alleged wrongful acts on his part as Collector in the sale of lands for delinquent taxes under the Jones-Munger law.

In the Fulks case the county was directly interested. In the matter under consideration here the county is not directly interested. A judgment, if recovered, against the Collector would not be payable out of county funds, but must be paid by the Collector or his bondsmen if he has violated any of his official duties and recovery is had against him on that account.

In such instances as the Legislature intended the county to have authority to employ attorneys and to pay them out of the county funds, the Legislature has so indicated that power. Illustrative of this is Section 11179, R. S. Mo. 1929, which provides as to accreted lands that the county court may employ surveyors to survey such accreted lands, and may employ attorneys to represent them in such suits pertaining thereto,

"and shall pay such surveyors and attorneys reasonable compensation for their services, to be paid out of any funds arising out of the sale of such lands and islands, or out of the general revenue fund of the county as may be agreed upon at the time such surveyors and attorneys are employed."

Section 11318, R. S. Mo. 1929, prescribing the duties of the prosecuting attorney, provides:

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"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, * * *."

This section requires the prosecuting attorney "to give his opinion, without fee, in matters of law in which the county is interested," but in the instant matter the county is not interested in whether a judgment is recovered against the collector or not. The recovery of a judgment against the collector could not affect the county.

The allowance of fees or costs to any officer is denied unless the statute may be definitely pointed to authorizing such allowance. This principle is announced in State ex rel. Troll v. Brown, 146 Mo. 401, l. c. 406, where the court said:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed."

It could not be contended that the collector is entitled to an attorney fees as a part of his compensation. The statute definitely prescribes the amount of compensation the collector is entitled to, and attorney fees are not part of such compensation.

We know of no statute which authorizes the county court to pay out the county public funds in payment of attorney fees to an attorney who is employed by the county collector in defending the county collector in a civil suit brought by another against the collector, and absent such definite statutory authority conferred upon the county court, the county court has no authority to pay such attorney fees. The public funds of the county must be expended on behalf of the county as such. They must be expended in the furtherance of public matters and then so authorized by statute.

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They cannot be expended in payment of the personal obligations incurred by an official in employing his own attorney to defend himself in a civil lawsuit.

CONCLUSION

It is our opinion that the collector of the revenue who has been sued by another for damages for wrongfully selling real estate in the collection of the delinquent taxes, and who employs an attorney to defend himself in such lawsuit, is not entitled to have the county court pay such attorney fees, nor is the county court authorized under the law to pay such attorney fees.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

DW:HR