

COUNTY COURTS: County courts have power to employ watchmen to preserve county property.

December 12, 1941

Hon. D. D. Thomas, Jr.
Prosecuting Attorney
Carrollton, Missouri

Dear Mr. Thomas:

This will acknowledge receipt of your letter of December 11, in which you ask for an opinion as follows:

"In view of the present National crisis, does the County Court have authority to employ and pay guards for County property, including buildings, bridges, etc.?"

Article 4, Chapter 100, R. S. Mo. 1939, is devoted to county buildings and county seats. In this article and chapter is Section 13730, which section is as follows:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."
(Underscoring ours)

In the early case of Walker v. Linn County, 72 Mo. 650, a case involving the power of the county court to procure insurance upon public buildings, the Supreme Court, at l. c. 653, used the following language:

"That a county court is invested with such powers only as are expressly conferred upon it by statute, and such as may be fairly or necessarily implied from those expressly granted, we think cannot

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be questioned. It, therefore, follows that the question of the power of the county court to bind the county in a contract such as is here sued upon, must be solved by the statute. That statutory provisions bearing upon the subject, are as follows: 'County courts shall, moreover, have the control and management of the property, real and personal, belonging to the county.' Wag. Stat., 441, Sec. 9. 'The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.' Wag. Stat., 404, Sec. 17. 'County courts may appoint an agent to make any contract on behalf of such county for erecting any county buildings; or for any other purpose authorized by law; and the contract of such agent duly executed on behalf of such county, shall bind such county.' Wag. Stat., 408, Sec. 3.

"The duty devolved upon county courts in the foregoing sections of taking such measures as shall be necessary to preserve all buildings and property belonging to a county carries with it the power to bind the county in a contract which, in the exercise of the judgment of the court, may seem to be necessary to consummate the object for which the duty was imposed, and which, in point of fact, tends directly to consummate the object. The contract in question is, we think, of this character, and, therefore, binding on the county, provided it is shown by the evidence that it was either made, or ratified and approved by the court."

This case is cited with approval and quoted in the case of Aslin v. Stoddard County, 341 Mo. 138, l. c. 146, in a case involving the hiring of a courthouse janitor.

Under the above authority, it would seem the county court would have authority to employ watchmen for county property if the court deems it necessary for the preservation of county buildings.

Attention is called to Article 2, Chapter 73, R. S. Mo. 1939, to the County Budget Law, which requires the budgeting of estimated expenditures to be made by the county, and prohibits the expenditure of funds not in accordance with the budget. If the budget of the county, as approved, did not have funds which were available for the purpose of paying watchmen, while the court might have authority to employ them, there would be no authority for paying them.

CONCLUSION

It is the conclusion that the county court has authority to employ and pay watchmen for the purpose of protecting and preserving county buildings and property, if the funds to pay such watchmen are available within the county budget.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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