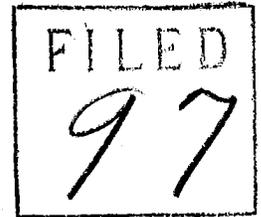


COUNTY COURTS: RE: County courts have the power, duty and authority to examine into the facts and law upon which fee bills are based.

February 4, 1946



Judge J. W. Wight
Moberly, Missouri

Dear Judge Wight:

Your recent request for an opinion has been assigned to the writer for answer. Your question concerned the power of a county court to issue warrants for criminal costs, without auditing or examining said costs as to their being proper charges, after they have been prepared by the clerk and certified to by the judge and prosecuting attorney, may be answered by an examination of the Constitution and statutes relating to the general powers and duties of county courts.

The Missouri Constitution, Article 6, Section 36, provides that in each county there shall be a county court and said court, "shall have jurisdiction to transact all county and such other business as may be prescribed by law". Section 2480, Revised Statutes of Missouri, 1939, provides that "said (county) court shall have control and management of the property * * *, and shall have power and authority to purchase, * * *, and to audit and settle all demands against the county." The section of the statutes regarding a fee bill bearing upon the present question is, section 4237, Mo. R. S., 1939, providing for the duty of the judge and prosecuting attorney in certifying the fee bill to the county court.

In explanation of the above quoted sections of the statutes and the discussion as to the general powers and duties of the county courts we believe the Rose and Wehmeyer cases to be in point.

The case of State v. Rose, 281 S. W. 396 points out that although the legislature has the power to provide for the payment of fees out of the county treasury, it can not take away from the county court the right to call in question both the facts and the law on which the payment of such fees are demanded. The Supreme Court in regard to the powers and duties of a county court said at l. c. 397:

"The various provisions of the Constitution and statutes (articles 6, Sec. 36, Const. of Mo., and sections 2574 and 9560 R. S. Mo.

1919) demonstrate that it is not only within the power, but is the duty, of the county court to look after public funds, examine, audit, adjust and settle all accounts to which the county shall be a party, and to pay out of the county treasury any sum of money found to be due by the county on such accounts; in short, responsibility for the safety of public funds, the accuracy and honesty of accounts, and statements of officials, is imposed on the county courts.* * *(underscoring ours.)

The Rose case was reaffirmed in the case of State v. Wehmeyer, 113 S. W. (2d) 1031, the court said that part of the jurisdiction with which the county court has been invested has given them the power and duty of auditing and settling all demands against the county.

An analogy for the lack of conclusiveness upon the county court of certified fee bills may be found in the case of State ex rel. vs. Wilder, 196 Mo. 418, 95 S. W. 396. In that case the court held that a certified fee bill drawn under section 4239 Mo. R. S. 1939, is not conclusive upon the State Auditor, but is only prima facie evidence of the facts contained therein. By analogy, we believe that the fee bills certified to the county court under section 4237, Mo. R. S. 1939, are not to be considered as conclusive upon the county court, but are to be considered only as prima facie evidence of the facts and charges contained therein.

Under Section 4240, Mo. R. S. 1939, the case of State vs. Heege, 40 Mo. App. 650, is cited as authority for the conclusiveness of fee bills upon county courts. After careful examination of the case annotating the statute cited, supra, we believe that the opinion of the Missouri Court of Appeals meant, that for procedural purposes the acts of a County court were ministerial in order for mandamus to lie, and that the court did not actually hold that the County court had no discretion to exercise in regard to the auditing of fee bills for criminal costs.

CONCLUSION

It is our opinion that; (1) at most a properly certified fee bill is only prima facie evidence of the charges and facts contained therein and is not conclusive upon the county court;

Judge J. W. Wight

-3-

(2) and that the county court has the power, duty and authority to examine the items contained in such fee bill and to adjust those items found not to be in accordance with the law and facts.

Very sincerely yours,

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APPROVED:

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WCB:mw