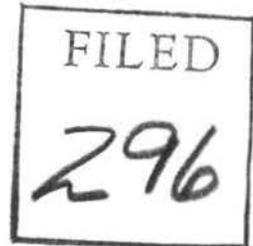


September 11, 1967



OPINION NO. 296
Answered by Letter
Stevens

Honorable Gene E. Voigts
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Voigts:

We are in receipt of your letter of May 31, 1967, requesting an official opinion from this office, concerning the question whether when the Clay County Election Board makes purchases authorized by Section 119.170 RSMo 1959, when there is a balance in the budget from which payment can be made, the County Court has the ministerial duty to pay for such items after receiving a proper requisition from the Election Board certified by the County Auditor.

Section 119.170, to which you refer, specifically provides that the Board of Election Commissioners may provide supplies necessary to have elections, "subject to the provisions of Section 50.660 RSMo".

Section 50.660 RSMo 1959, in addition to other provisions, provides that all contracts must be certified by the county auditor.

Honorable Gene E. Voigts

We are enclosing a copy of our Opinion No. 9, dated March 23, 1961, directed to Senator Earl R. Blackwell. This opinion sets out the sections of the statutes in question in full and interprets the effect thereof.

Your inquiry asks whether the County Court shall have only the ministerial duty to pay for items upon receiving a proper requisition from the election board properly certified by the county auditor. In other words, the question is whether the court must, as a matter of course, ratify the Board's bills without exercising any independent discretion.

You cite the case of State vs. Matthews, 274 S.W.2d 286, and infer that this case seems to substantiate the view that the County Court must, as a matter of course, ratify the election Board's bills which are presented to them without exercising any discretion on the part of the Court.

The Matthews case that you cite is not determinative of the issue involved here.

In the Matthews case, the St. Louis County Council (the governing body of the County) had refused to pay for voting machines selected by the Board of Election Commissioners.

The Court held that the bid on the machines was rejected "not because it was not the lowest and best bid obtainable * ** but solely because the Council preferred a different type of machine". (l.c. 292).

Section 50.760 provides that it shall be the duty of the judges of the County Court in counties of the second class to determine the kind and quantity of supplies to be paid for out of County funds. The word "determine" has been defined by our Supreme Court in State vs. Bode, 113 S.W.2d 805, 808 as follows:

"The word 'determine' as commonly used, means to conclude, settle, decide and fix."

Sections 50.760 and 50.780 both provide that the County Court must "contract" for supplies. Contract is defined by Black's Law Dictionary, IV Edition, p. 394, as "to enter into an agreement, upon sufficient consideration, to do or not to do a particular thing." Webster's International Dictionary defines "contract" as meaning "to enter into with mutual obligations."

Honorable Gene E. Voigts

By these definitions, it would seem that the County Court would not be acting in a purely "ministerial" manner in approving prospective expenses, or in contracting for supplies, but would be exercising a discretionary function.

It is clearly demonstrated that the intention of the Legislature in promulgating these sections of the statute was to permit the County Court to use its discretion in the exercising of its duties.

This interpretation is further strengthened by the wording of Section 50.780, which gives the judges the right to give preference in the purchase of supplies to local merchants, "provided the price offered is not above that offered elsewhere."

The order of the County Court as provided in Section 50.780 RSMo 1959, could not be interpreted as a "ministerial function" as it is clearly a discretionary act.

It follows that the Board of Election Commissioners of a County of the second class is not authorized by Section 119.170 to make purchases without complying with the provisions of Sections 50.660, 50.760 and 50.780 RSMo 1959.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

OHS/fb

Enclosure - Opinion No. 9, 3-23-61-Blackwell