

COOPERATIVE AGREEMENTS:
COUNTY COURTS:
COUNTY CLERKS:

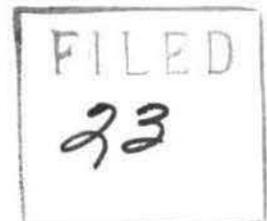
(1) Clay County can contract with the municipalities of Clay County to extend the taxes for said municipalities. (2) The County Clerk of

Clay County has the discretionary authority to decide whether he will enter into a cooperative agreement with a municipality of Clay County to provide a common service pursuant to cooperative agreement statute; and assuming that the clerk of Clay County decides to enter such a contract, the contract must be taken before the county court of Clay County for approval. (3) Any consideration paid pursuant to a cooperative agreement contract for the extension of taxes between the county clerk of Clay County and the municipalities of Clay County must be paid into the county treasury.

OPINION NO. 23

January 21, 1970

Honorable P. Wayne Kuhlman
Assistant Prosecuting Attorney
Clay County Courthouse
Liberty, Missouri 64068



Dear Mr. Kuhlman:

This is in answer to your letter requesting an opinion of this office in which you ask whether Clay County can enter into a cooperative agreement with some municipalities of Clay County to extend the taxes for said municipalities. Additionally, you requested an opinion as to who would be the correct county official to perform this service.

Article VI, Section 16, Constitution of Missouri, provides as follows:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

This section of the Constitution authorizes the legislature to pass laws respecting cooperative agreements between a municipality and a political subdivision for the planning, development, construction and acquisition or operation of any public improvement

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facility or for a common service. Implementing this constitutional provision, the legislature enacted Section 70.220, RSMo, which provides as follows:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides."

Thus, counties and cities may contract for a common service, in this instance, the extension of taxes, provided the subject and purpose is within the scope of their powers.

Pursuant to Section 137.290, RSMo, Clay County, acting through its county clerk, is given the authority to extend taxes in the assessor's books:

"The clerk of the county court in each county, upon receipt of the certificates of the rates levied by the county court, school districts and other political subdivisions authorized by law to make levies or required by law to certify levies to the county court or clerk of the county court, shall then extend the taxes in the assessor's book, in proper columns prepared for the extensions according to the rates levied. . . ."

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Further, by Section 93.100, RSMo, the auditor of a first class city is given the authority to extend taxes; by Section 93.455, RSMo, the city clerk of a second class city is given the authority to extend taxes; by Section 94.130, RSMo, the city clerk of a third class city is given the authority to extend taxes; and similarly, by Section 94.290, RSMo, the city clerk of a fourth class city is given the authority to extend taxes. Thus, the subject and purpose of a contract between Clay County and the municipalities in Clay County providing for the extension of taxes is within the scope of city and county powers, and it is the conclusion of this office that Clay County can contract with the municipalities of Clay County to extend taxes for said municipalities.

The question then becomes one of which county body or officer of Clay County has the duty and the authority to extend the taxes for Clay County. As we have noticed previously, pursuant to Section 137.290, supra, the extension of taxes is a duty of the county clerk. Thus, it is the further conclusion of this office that having been given the authority to extend taxes pursuant to Section 137.290, supra, the county clerk of Clay County can enter into a cooperative agreement with a municipality of Clay County pursuant to Section 70.220, supra, to perform the extension of taxes for said municipalities.

As can be seen, however, when the cooperative action entered into is between a municipality or political subdivision, and an elective or appointive official of another municipality or political subdivision, said contract of cooperative action must be approved by the governing body of the unit of government in which said elective or appointive official resides. In the instance under immediate consideration then, Section 70.220, supra, thus requires that before the county clerk of Clay County may enter into a cooperative agreement with the municipalities of Clay County, the county court of Clay County must approve said contract.

It is to be noted additionally that Section 70.220, supra, gives the discretionary authority to the contracting elective or appointive official as to whether he will in the first instance agree to the cooperative action:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof. . ."

Thus, it is the conclusion of this office that the county clerk of Clay County in the first instance has the discretionary

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authority to decide whether he will enter into a cooperative agreement with a municipality of Clay County to provide a common service pursuant to the cooperative agreement statute, and assuming that the clerk of Clay County decides to enter such a contract, the contract must be taken before the county court of Clay County for approval.

The question thus arises as to whether consideration paid under a cooperative agreement is to be paid as a form of compensation to the county clerk, or is to be paid into the county treasury. The county clerk of Clay County receives compensation for his duties generally pursuant to Chapter 51, RSMo, as amended. Chapter 51 and the cooperative agreement statute are both silent as to any compensation to be paid to a county clerk who becomes party to a cooperative agreement contract. In similar instances the Supreme Court of Missouri has held that the mere fact additional duties are assumed by a county officer does not entitle him to additional compensation. Mooney v. County of St. Louis (Mo. Sup.), 286 S.W.2d 763. Additionally, the Supreme Court of Missouri has held that the right of a public officer to be compensated by salary or fees for the performance of duties imposed upon him by law is purely a creature of statute. Felker v. Carpenter (Mo. Sup.), 340 S.W.2d 696. Further, the court has held that before a public official may retain fees or other payments received by virtue of his office he must point out the statute authorizing such retention. State v. Ludwig (Mo. Sup.), 322 S.W.2d 841.

Thus, it is the conclusion of this office that any consideration paid pursuant to a cooperative agreement contract for the extension of taxes between the county clerk of Clay County and the municipalities of Clay County must be paid into the county treasury.

CONCLUSION

Therefore, it is the opinion of this office that:

(1) Clay County can contract with the municipalities of Clay County to extend the taxes for said municipalities.

(2) The county clerk of Clay County has the discretionary authority to decide whether he will enter into a cooperative agreement with a municipality of Clay County to provide a common service pursuant to cooperative agreement statute; and assuming that the clerk of Clay County decides to enter such a contract, the contract must be taken before the county court of Clay County for approval.

(3) Any consideration paid pursuant to a cooperative agreement contract for the extension of taxes between the county clerk

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of Clay County and the municipalities of Clay County must be paid into the county treasury.

The foregoing opinion, which I hereby approve, was prepared by my assistant Kenneth M. Romines.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General