

JAILS:
COUNTY COURT:
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The County Court of Cape Girardeau County may, pursuant to Section 49.310, RSMo, erect a jail at the site referred to as "The Cape Girardeau County Farm" located in the City of Cape Girardeau.

OPINION NO. 88

April 1, 1971

Honorable A. J. Seier
Prosecuting Attorney
Cape Girardeau County
225 N. Clark
Cape Girardeau, Missouri 63701



Dear Mr. Seier:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"I've recently had an opportunity to read your Opinion No. 505 addressed to the Honorable E. Richard Weber, Prosecuting Attorney of Scotland County. We have a corollary problem in Cape Girardeau County and would appreciate your opinion under the following facts.

"As you know, Cape Girardeau County has two courthouses, one in the County Seat of Jackson which is the Circuit Court, and the Cape Girardeau Court of Common Pleas which is located in the City of Cape Girardeau. Cape Girardeau Court of Common Pleas has limited criminal jurisdiction, and my office does not handle any criminal matters directly in that court. Therefore, the only jail is located in the City of Jackson less than half a block away from the courthouse.

"Our County Court has recently been considering the construction of a new jail, and I have cited to them RSMo. 49.310 which is also cited in your Opinion No. 505 referred to above. Under RSMo. 49.310 it appears that the County Court must erect and maintain 'at the established seat of justice' a jail. In the second sentence in that section, it provides ' . . . and in counties wherein more than one place is provided by law

Honorable A. J. Seier

for holding of court, the County Court may buy and equip and acquire a site and construct a building or buildings to be used as a courthouse and jail . . . ' .

"The question we would like to have an opinion on is whether or not we could construct a jail in Cape Girardeau County on what is commonly called 'The Cape Girardeau County Farm' which is located within the City of Cape Girardeau and is not the established seat of justice so far as criminal cases are concerned? In addition, we'd like to know whether or not a courthouse and jail would have to be combined under the provision in the second sentence of RSMo. 49.310 before such a jail could be constructed within the city limits of Cape Girardeau "

You have made reference to Attorney General Opinion No. 505, October 9, 1970, Webber. Although certain of the statutes cited in that opinion are applicable here, Opinion No. 505 is not.

Such applicable statutes and additional statutes are quoted in pertinent part as follows:

"The county court of any county may acquire by purchase, for the county, improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary; . . . " Section 49.305, RSMo.

"The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county; except, that in counties having a special charter, the jail or workhouse may be located at any place within the county. In pursuance of the authority herein delegated to the county courts, the county courts may acquire a site, construct, reconstruct, remodel, repair, maintain and equip the courthouse and jail, and in counties wherein more than one place is provided by law for holding of court, the county court may buy and equip or acquire a site and construct a building or buildings to be used as a courthouse and jail, and may remodel, repair, maintain and equip buildings in both places. . . . " Section 49.310, RSMo.

"The county court shall designate the place whereon to erect any county building, on any land belonging to such county, at the established seat of justice thereof." Section 49.370, RSMo.

Honorable A. J. Seier

Thus, jails, with two exceptions, to be noted below, are to be located in each county "at the established seat of justice."

A county's "seat of justice", which is synonymous to the "county seat" is the town where the courthouse and other county buildings are located and which is designated as such under the constitution and statutes of Missouri. Babcock v. Hahn, 75 S.W. 93 (Mo. 1903). The official seat of justice, or county seat, of Cape Girardeau County, as recognized by your letter, is the City of Jackson. Therefore, unless one of the exceptions apply, the jail must be erected in the City of Jackson.

One of the exceptions in Section 49.310 pertains to special charter counties and therefore is not applicable here. The other exception in Section 49.310 is for counties where there is more than one place for holding court. In such counties a jail may be constructed in both places.

Section 480.010, RSMo, provides as follows:

"A court of record, to be called 'The Cape Girardeau Court of Common Pleas', is hereby established within and for the city of Cape Girardeau, in the county of Cape Girardeau, which shall possess all the powers, perform the duties and be subject to the restrictions of a court of record according to the laws of this state."

It is our opinion, therefore, that the County Court of Cape Girardeau County may erect a jail in the City of Cape Girardeau.

You have also asked if the jail would have to be combined in the same building with the courthouse. In our opinion the statutes do not make such a requirement. See Security State Bank v. Dent County, 137 S.W.2d 960 (Mo.1940). Therefore, it is our further opinion that the jail could be erected at the site referred to as "The Cape Girardeau County Farm", which is located in the City of Cape Girardeau.

CONCLUSION

It is the opinion of this office that the County Court of Cape Girardeau County may, pursuant to Section 49.310, RSMo, erect a jail at the site referred to as "The Cape Girardeau County Farm" located in the City of Cape Girardeau.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General