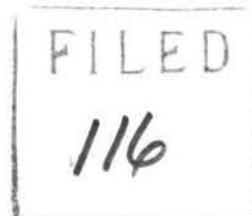


COUNTIES:
COUNTY COURT:

The action of the county court of Madison County donating five hundred dollars to a Joint Committee for Transportation for the purpose of opposing a proceeding before the Interstate Commerce Commission for abandonment of a railroad was illegal and void.

OPINION NO. 116

February 11, 1971



Honorable John W. Reid II
Prosecuting Attorney
Madison County
148 East Main Street
Fredericktown, Missouri 63645

Dear Mr. Reid:

This is in response to your request for an opinion from this office as follows:

"Missouri Pacific Railroad paid \$43,421.55 in taxes to Madison County for the year 1970. Missouri Pacific Railroad has filed with the Interstate Commerce Commission a proceeding to abandon its rail service in Madison County, Missouri, as well as adjoining counties. On November 30, 1970, the Madison County Court authorized a \$500.00 donation to the Joint Committee for Transportation for the purpose of keeping the Missouri Pacific Railroad in Madison County. I have enclosed a certified copy of the Minutes of the County Court and also a copy of the cancelled check.

"Question 1: Is it permissible for a County Court of a Third Class County to pay out of general revenue a \$500.00 donation to the Joint Committee for Transportation whose purpose is to fight a rail abandonment which was filed with the Interstate Commerce Commission by a railroad wanting to discontinue its line in said county?

"Question 2: If a donation as described in Question 1 is permissible, under the Missouri Law by the County Court, can the County Court of a Third Class County make said donations without budgeting for said donation?

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"Question 3: If a donation as described in Question 1 is permissible, can said donation be made by the County Court at a time when its members know the general revenue fund will not receive enough revenue for the current year to pay off the Tax Anticipation Notes?

"I appreciate your cooperation on this matter, and would like to have an opinion of the above three questions as soon as possible, due to the fact that the County Court which took office January 1, 1971, finds that approximately \$11,000.00 of the 1970 Tax Anticipation notes can not be paid

"In other words, the County spent approximately \$11,000.00 more out of the general revenue fund than it received."

Madison County is a third class county.

In your first question you inquire whether it is permissible for a county court of a third class county to pay out of general revenue five hundred dollars as a donation to the Joint Committee for Transportation whose purpose is to fight a railroad abandonment proceeding filed with the Interstate Commerce Commission by a railroad wanting to discontinue its line in said county.

We are enclosing herewith Opinion No. 75 issued by this office on February 29, 1952, to Honorable James T. Riley, Prosecuting Attorney of Cole County, Missouri, holding a county court has no authority to give public funds to a private corporation.

You enclose a certified copy of the minutes of the county court which is as follows:

"Richard Ferguson appears before Court about donation to keep Railroad in Madison County. Mr. Ferguson stated, December 15th. was deadline for all donations. The Court agreed to give \$500.00 check payable to, Joint Committee for Transportation, mail to Raymond Skaggs, P. O. Box 346, Fredericktown, Missouri."

In State ex rel. Floyd v. Philpot, 266 S.W.2d 704, 710, the jurisdiction and authority of county courts is described as follows:

"County Courts are not now named among the 'constitutional courts' in which the judicial

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power of the state is vested, Article V, Constitution of Missouri 1945, V.A.M.S., but such courts are recognized in the Article treating with 'Local Government,' and they are given authority to 'manage all county business as prescribed by law'. Section 7, Article VI, Constitution of Missouri 1945, V.A.M.S. The authorities are uniform to the effect that, outside of the management of the fiscal affairs of the county, such courts possess no powers except those conferred by statute. Rippeto v. Thompson, 358 Mo. 721, 216 S.W.2d 505, 508; Bradford v. Phelps Co., 357 Mo. 830, 210 S.W.2d 996, 999; Lancaster v. Atchison Co., 352 Mo. 1039, 180 S.W.2d 706, 708; State ex rel. Walther v. Johnson, 351 Mo. 293, 173 S.W.2d 411, 413." (Emphasis supplied)

In the above case, the Supreme Court held the county court of Douglas County had no authority whatever to determine whether an applicant for a state liquor license to sell intoxicating liquor at retail in Douglas County had met the statutory qualifications. The court held that under the statute these matters were to be determined by the State Supervisor of Liquor Control and that the county court had no discretion whatsoever.

Section 432.070, RSMo 1969, provides as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

In Thies v. St. Louis County, 402 S.W.2d 376, the Supreme Court held in this statutory provision that a contract made by a county, shall be in writing and subscribed by the parties thereto or their agents, is mandatory.

The above order made by the county court certainly does not comply with this statutory provision, and it cannot be considered

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as a valid contract by the county. Cook v. St. Francois County, 162 S.W.2d 252; Becker v. St. Francois County, 421 S.W.2d 779; Edwards v. City of Kirkwood, 147 Mo.App. 599.

Since this is not a valid contract for the payment of public funds, it must be considered as a donation or gift.

We are unable to find any statute authorizing a county to grant or donate public funds for the purpose as stated herein.

In Ruggeri v. City of St. Louis, 429 S.W.2d 765, the issue presented to the Supreme Court was an ordinance passed by the City of St. Louis levying a tax on patrons of all motels, hotels and restaurants. The ordinance provided for the proceeds of the tax to be turned over to the Convention and Tourist Board of Greater St. Louis, a pro forma decree corporation, and to be used by it for the purpose of inviting and encouraging conventions and other public meetings to be held in the City of St. Louis. Although the proceeds of the tax was to be paid over to the private corporation for a definite purpose, the Supreme Court held the ordinance was invalid as being in conflict with Article X, Section 3 and Article VI, Section 25 of the Constitution of Missouri as a donation of public funds to a private corporation.

Although the above case dealt with the authority of a municipality to donate public funds, the same constitutional provision applies to the acts of a county in donating public funds.

In answer to your first question whether the action of the county court of Madison County in donating five hundred dollars to the Joint Committee for Transportation to be used in opposing a proceeding before the Interstate Commerce Commission for abandonment of a railroad is permissible, in our opinion it is not.

In view of our answer to your first question, the other questions you submit are moot.

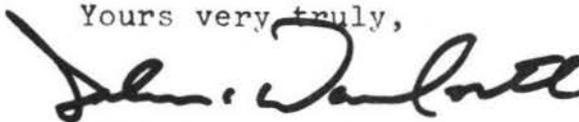
CONCLUSION

It is the opinion of this office that the action of the county court of Madison County donating five hundred dollars to a Joint Committee for Transportation for the purpose of opposing a proceeding before the Interstate Commerce Commission for abandonment of a railroad was illegal and void.

Honorable John W. Reid II

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

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, sweeping initial "J".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 75
2-29-52, Riley