

COUNTY COURTS: The power of the County Court to
SOLICITORS ON make orders relating to trespassers
PUBLIC GROUNDS: on county property and to prohibit
JUSTICE OF PEACE persons from performing such acts.
SOLICITING MARRIAGES: -----

January 20, 1941

Mr. James D. Clemens
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Dear Sir:

This is in reply to yours of recent date wherein you set out the following statement of facts and questions:

"The facts of the situation are these: A certain Justice of the Peace here in this county habitually spends his time in the halls of and about the entrances to and side-walks around the courthouse, soliciting couples for permission to perform marriages for them. He does not enter the offices of any of the county officials for this purpose. On October 30, 1938, the County Court made an order prohibiting persons from interfering with the operation of the office of any county official, and further declaring:

"It is hereby ordered by the Court that no loafing, loitering, soliciting or peddling shall be allowed in the courthouse of Pike County, Missouri, or on the grounds adjacent to said Courthouse, and that any person found loafing, loitering, soliciting or peddling in said Courthouse or on Courthouse grounds shall be considered a trespasser

and the Sheriff of Pike County, Missouri, and any officer of the State Highway Patrol, is hereby ordered and directed to immediately remove and arrest such trespasser."

"The questions upon which I would like to have your opinion are (1) Has the County Court the right to prohibit persons from soliciting in and about the courthouse? and (2) Is a Justice of the Peace soliciting marriages in and about the courthouse a trespasser, when such solicitation has been so prohibited?"

County courts are given the control and management over the property of the county by virtue of Section 2078, R. S. Mo. 1929. This section provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 12071, R. S. Mo. 1929, provides as follows:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings,

which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

The last sentence of this section directs the court to take necessary steps to preserve buildings and property of the county.

In the case of Sparks v. Purdy, 11 Mo. 142, 1. c. 144, the question of just how much authority the county court had under the provisions of the statute which gives it control and management over the county property was before the court, and there the court said:

"The law intrusts the County Court with the control and management of the property, real and personal of the county; and under this power the court superintends the public buildings. Public convenience requires that a summary power to prevent the illegal occupation of, and to eject trespassers from the places designed for the transaction of the business of the county should exist in some body. It could never have been the intention of the Legislature, that the County Courts in the State should proceed by ordinary suit at law in order to obtain possession of the public buildings or parts of them."

This case, however, was dealing with a trespasser. The party who had been ejected there was one who was trying to occupy one of the offices of the court house and the foregoing rule was announced as to that particular case.

In the case of Morgan v. Owen, 193 Mo. 587, l. c. 596, the court followed the rule announced in Sparks v. Purdy, supra, and said:

"The county court was entitled to the free and unconditional access to and use of its records and it was entitled to treat any one as a trespasser who, without official authority, obstructed its access to or use of the same. * * * * *"

In the case of Walker v. Linn County, 72 Mo. 650, the question of the power and duty of the county court with reference to insuring county buildings was before the court and the court said, l. c. 653:

"That a county court is invested with such powers only as are expressly conferred upon it by statute, and such as may be fairly or necessarily implied from those expressly granted, we think cannot be questioned. It, therefore, follows that the question of the power of the county court to bind the county in a contract such as is here sued upon, must be solved by the statute. The statutory provisions bearing upon the subject, are as follows: 'County courts shall, moreover, have the control and management of the property, real and personal, belonging to the county.' Wag. Stat., 441, Sec. 9. 'The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the

county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.' Wag. Stat., 404, Sec. 17. 'County courts may appoint an agent to make any contract on behalf of such county for erecting any county buildings; or for any other purpose authorized by law; and the contract of such agent duly executed on behalf of such county, shall bind such county.' Wag. Stat., 408, Sec. 3.

"The duty devolved upon county courts in the foregoing sections of taking such measures as shall be necessary to preserve all buildings and property belonging to a county carries with it the power to bind the county in a contract which, in the exercise of the judgment of the court, may seem to be necessary to consummate the object for which the duty was imposed, and which, in point of fact, tends directly to consummate the object. The contract in question is, we think, of this character, and is, therefore, binding on the county, provided it is shown by the evidence that it was either made, or ratified and approved by the court."

The statutes hereinbefore cited have the same provisions in them as to the control and management of the county property as did the Wagner Statute referred to in the Linn County case, supra.

If a person is actually a trespasser on county property, then, by virtue of the authority imposed in the county court to control and manage such property, we think the county court would be authorized to eject such person

from the buildings or public places in which he is trespassing. We think the rule announced in the case of *Morgan v. Durfee*, 69 Mo. 469, would be applicable, wherein the court held that every man has a right to defend his premises from intrusion as well as his person from attack, and for that purpose to employ such force as may reasonably appear to him to be necessary. The court house is county property and belongs to the county and the lawmakers have delegated the duty to the county court to control and manage this property and we think that the county court, as the agent for the county, would be authorized to defend the premises of the county and to eject trespassers the same as a private individual would his premises.

In Volume 15 C. J. page 536, at Section 220, the rule is stated in the following language:

"The control and management of all property, real and personal, for the use of a county, is usually expressly vested by statute in the county board or county court of each county, and in such control and management the board occupies a position of trust, and is bound by the same rules of fidelity as a trustee of an express trust. Such board cannot, however, authorize the use of county property for purposes other than those provided by law, as declared by statutes in effect at the time, the legislature having power, on account of a county being but a mere agency of the state, to control the use, management, and disposition of county property, except where the property has been acquired by a grant limiting its use to certain specified purposes. * * * * *"

It will be noted that the rule is announced here that county property may not be used for any other purpose than

that provided by law. It cannot successfully be contended that the court house of the county may be used for other purposes than for public use. In other words, no one is authorized to carry on a private business in a court house in this State. The term "public use" is discussed in Volume 50 C. J. at page 864, paragraph 94, as follows:

"* * * In general it may be said that a public use is one which concerns the general public or a portion thereof as distinguished from particular individuals or estates. * * *"

In the case of State ex inf. McKittrick v. Wymore, 132 S. W. 979, l. c. 987, the court, in discussing the implied powers of public officials quoted the rule announced in Corpus Juris and stated as follows:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes.' 46 C. J. Sec. 301, p. 1035.

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' Throop's Public Officers, Sec. 542, p. 515.

"Necessary implications and intendments from the language employed in a statute may be resorted to to ascer-

tain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication.' * * * *"

When your County Court made the rule which is set out in your request, evidently it had in mind the rule announced in the Wymore case, that is, that because it had control and management of county property it was authorized to provide that loafing, loitering, soliciting, or peddling on the court house grounds would be deemed trespassing. Since court houses and court house grounds are public grounds and the entire public is permitted to go into and upon them, it would be a question of fact whether or not a person is a trespasser thereon, and we do not think that the county court would have the implied power to make such parties trespassers. If a person either by soliciting, peddling or loitering, or by any other action, conducts himself so that he becomes a nuisance or so that he interferes with the public officials in the performance of their duties then, we think the county court, under the rules hereinbefore stated, would be authorized to eject him as a trespasser.

We are also further of the opinion that since court houses and court house grounds are only for public use that the county court would be authorized to make the rule hereinbefore referred to, because the general public is not required to furnish an office and space for a person to conduct a private business.

CONCLUSION.

Answering your questions, it is the opinion of this Department that:

(1) The County Court, as the agency which is placed in control and management of county property, is authorized to prohibit persons from soliciting in and about the court house, providing such solicitation prevents the public officials from performing their official duties or interferes with the general public in its free access to, and use of, of the public grounds.

(2) We are further of the opinion that if a Justice of the Peace, in his soliciting of marriages, conducts himself so that he becomes a nuisance to the public and to the public officials in the performance of their official duties then, we think the County Court would be authorized in ejecting such person from the premises. The question of whether such Justice of the Peace so conducts himself in soliciting marriages that he becomes a nuisance and, therefore, would be a trespasser, would be a question of fact in each particular case, and this Department would not be in a position to say definitely whether in any, and all, cases such person would be a trespasser.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
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TWB:CP