

OFFICERS: Circuit clerk in a county of less than 50,000 population may purchase his own supplies within his budget.

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December 23, 1941

Honorable Charles S. Greenwood  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of December 1, 1941, which is as follows:

"I would appreciate receiving an opinion from your office concerning the proper application of the County Budget law as applied to certain acts of our County Court and other County officers.

"Our County Court has taken the position that the purchase of all supplies, printed forms and record books should be made by them and that procedure has been followed in each office in the county with the exception of the Circuit Clerk and Ex Officio Recorder of Deeds. In other words, the procedure has been to submit a requisition to the County Court and they themselves contact the supplier and purchase the material requested except as stated above in the case of the Circuit Clerk and Ex Officio Recorder of Deeds. The Circuit Clerk feeling that under the budget law and other provisions of the statutes his office is entitled to make its own purchases of such office supplies and particularly record books and requesting the supplier to bill the County Court direct. At the present time, there are a number of accounts representing record books and other printed requirements which have been furnished the Circuit Clerk upon his order and which accounts have been refused payment by the County Court on the

theory that such purchases should have been made by the County Court.

"The Circuit Clerk contends that under Section 13291 and 1336, he has the authority to purchase such supplies for his office. It is also contended that the purchase of supplies of this character is not a matter of 'county business' as within the meaning of Article 6, Section 36, of the Constitution of the State of Missouri.

"Specifically the points at issue are:

"First, does the County Court under the County Budget law in counties of population less than 50,000 have the authority to require that all purchases of supplies be made through the County Court and by the County Court, particularly supplies used by the Circuit Clerk and Recorder of Deeds?

"Second, does the County Court have the authority to require any county office to make its purchases through the County Court?

"Third, can the County Court successfully resist the suit to compel payment of the accounts incurred by the Circuit Clerk for the supplies mentioned above?

"The Circuit Clerk by these purchases has not exceeded his budget allowances.

"An early opinion in this respect will be greatly appreciated."

Section 13291, R. S. Missouri 1939, provides as follows:

"Sec. 13291. Office supplies--duties relating to.--Each clerk shall preserve the seal and other property belonging to his office, and shall provide and

preserve suitable books, stationery and furniture for his office, and keep a correct account thereof; and each court shall audit such accounts, and allow such as shall be reasonable; but no article charged on any such account shall be allowed unless it properly comes within the description of those expressly named, except for fuel furnished for such office, for which the court shall make a reasonable allowance."

Section 13186, R. S. Missouri 1939, provides as follows:

"Sec. 13186. County court to settle accounts of recorder.--It shall be the duty of the county court to audit and settle the accounts of recorders for books purchased for the use of their offices, and allow, in their discretion, such sums as shall be reasonable, to be paid out of the county treasury."

The Missouri Courts have held, prior to the adoption of the County Budget Law, that a circuit clerk can legally provide supplies, such as a judgment docket, for his office with the approval of the circuit court and that the county is liable for said expense, if reasonable and covered by the statute. See *Maupin v. Franklin County*, 67 Mo. 327; *St. Louis County v. Ruland*, 5 Mo. 269; *State ex rel. Goldsby v. County Court of Livingston County*, 51 Mo. 557. In the case of *Smalley v. Dent County*, 177 S. W. 620, it was held that a circuit clerk and ex officio recorder of deeds in said county could legally provide for a telephone, without the approval of the county court, under the provisions of Sections 13291, 13148, 13149 and 13176, R. S. Missouri 1939. In the case of *Ewing v. Vernon County*, 216 Mo. 681, 116 S. W. 518, the court held that if the county court did not employ a janitor for the recorder that he could provide a janitor himself and compel county to pay reasonable compensation therefor.

The County Budget Law was passed by the Legislature in 1933 and provides for the classification of county expendi-

tures for the current year and for the filing with the county clerk, of estimates on the 15th day of January of each year by every officer claiming any payment for salary or supplies for that year, same to be approved by the county court and go into the yearly budget.

It is our understanding that the Circuit Clerk and Ex Officio Recorder of Deeds of Livingston County duly filed approved estimates of supplies needed which were then approved by the County Court at the February Term as his budget allowances for the year.

According to the terms of Section 10918, R. S. Missouri 1939, and the following Sections 10923 to 10933, inclusive, of the County Budget Law, apply to counties of over 50,000 population. Section 10931, supra, includes special provisions that the county court cannot change the budget estimates of the circuit courts and circuit clerks in the larger counties. In the case of *Graves v. Purcell, et al.*, 337 Mo. 574, 85 S. W. (2d) 543, said Section 10931, was held constitutional and not in conflict with Section 36 of Article VI of the Missouri State Constitution which provides that the county court shall have jurisdiction to transact all county business. In that case the court said:

"We do not think that the section of the act here complained of grants to the circuit court or to the circuit clerk any power to expend money, but merely provides for the payment to the court and its clerk of such expenditures as under existing law the court and its clerk may be entitled to make and which are chargeable to the county. As the circuit clerk is the ministerial officer of the circuit court, the expenses of both may properly be regarded as expenses of the circuit court. Within the confines of constitutional limitations, it was open to the Legislature to determine the policy to be followed in defining the scope of county budgetary control and procedure. It was certainly within the power and province of the Legislature to provide that in the matter of its lawful expenditures the circuit court

should be free from the control of the county court. We need hardly add that the duties performed by the circuit court and the circuit clerk do not constitute 'county business' within the meaning of section 36 of article 6 of the Constitution. State ex rel. v. Ieml, 242 Mo. 293, 146 S. W. 799; Little River Drainage District v. Lassater, 325 Mo. 493, loc. cit. 501, 29 S. W. (2d) 716." (See also State ex rel. Hill v. Thatcher, 94 S. W. (2d) 1053.) Consult Traub v. Buchanan County, 341 Mo. 727, 108 S. W. (2d) 340 and Carter-Waters Corporation v. Buchanan County, 129 S. W. (2d) 914.

Section 10931, supra, does not apply to Livingston County, but the fact remains that the budget estimate of the Circuit Clerk and Ex-Officio Recorder of Deeds was not altered by the County Court but approved by them. The case of Missouri-Kansas Chemical Corporation v. New Madrid County, 345 Mo. 1167 held against recovery from county for sheriff's purchase of disinfectant for county jail but the ruling was based upon the fact that the attempted expenditure exceeded the sheriff's budget allowance. See also the case of Buchanan v. Ralls County, 283 Mo. 10, 222 S. W. 1002, and Harkreader v. Vernon County, 216 Mo. 1. c. 693, 116 S. W. 523; also the late case of Rinehart v. Howell County, 153 S. W. (2d) 381.

In view of the foregoing statutes and court decisions, we believe that a circuit clerk and ex-officio recorder of deeds has authority to make necessary purchases of supplies for his office not inconsistent with the statutory authorizations and within the limits of his budget allowances. There is no statutory provision providing that the county court shall be a purchasing agent for the county officers.

We are enclosing copy of an opinion rendered by this office to the Honorable Gus James, Clerk of the County Court, Bollinger County, Zalma, Missouri, dated May 9, 1941, which holds that the county courts do not have exclusive control over the purchase of incidental expenses or supplies for the proper conduct of a county office.

Hon. Charles S. Greenwood

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CONCLUSION

It is, therefore, the opinion of this department that the Circuit Clerk and Ex-Officio Recorder of Deeds of Livingston County, a county of less than 50,000 population, has authority to purchase supplies for his office not in excess of his budget allowances and within the limits of the statutory provisions relative thereto, and that the County Court could not successfully resist suit to compel payment of accounts for such supplies lawfully incurred by the Circuit Clerk and Ex-Officio Recorder of Deeds.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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