

OFFICERS:

County officers in counties under 50,000 population may purchase own supplies.

February 12, 1942

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Mr. George Adams
Prosecuting Attorney
Audrain County
Mexico, Missouri

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FILE

Dear Sir:

This department is in receipt of your letter of February 5, 1942, requesting an opinion, which reads as follows:

"May I have the opinion of your department on the following questions:

"1. Does the County Court of Audrain County have the exclusive authority to purchase necessary supplies for all county offices?

"2. If the County Court of Audrain County should establish and itself operate a central system of supply for all county offices, and if it does have the exclusive authority to purchase necessary supplies for all county offices, would it be liable for payment for supplies purchased directly from vendors by any of the county offices?

"3. To what extent is the County Court of Audrain County liable for payment for supplies purchased directly from vendors by the respective county offices?

"4. What offices, under the law, are county offices such as come within the purview of the opinion to be rendered on the foregoing questions and what offices, if any, are excepted?"

All four questions which you have set out in your request will be answered by our opinion on your first question.

Section 36, Article VI, of the Missouri Constitution reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

By reason of the above section, the Legislature enacted Section 2480, R. S. Mo. 1939, which reads 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."

The above section was construed in the case of State v. McElroy, 274 S. W. 749, 1. c. 752, where the court said:

"In Russell v. Crook County Court, 75 Or. loc. cit. 169, 145 P. 653, 146 P. 806, 'county business' from a constitutional sense has been well defined. The syllabus reads:

"(7) "County business," within article VII, sections 11, 12, of the Constitution, authorizing the Legislature to provide for the election of two commissioners to sit with the county judge while transacting county business, and the statute providing for the election of two persons to sit with the county judge in the transaction of county business, means all business pertaining to the county as a corporate entity, and the Legislature may neither limit nor extend the operation of the Constitution, and a proceeding to create a new county out of territory of an existing county is county business.'

"The California court in *Fragley v. Phelan*, 126 Cal. loc. cit. 388, 58 P. 625, borrows the New York definition of 'county affairs,' thus:

"In defining the phrase "county affairs" the court said in *Hankins v. Mayor*, 64 N. Y. 22: "County affairs are those relating to the county in its organic and corporate capacity, and included within its governmental or corporate powers.""

Under the above holding, "county affairs" and "county business" were defined as meaning the county in its corporate entity and not the business or powers of each individual officeholder.

Before the enactment of Article 2, Chapter 73, R. S. Mo. 1939, which is the County Budget Law, the county was liable for all necessary furniture and supplies purchased by the elected and appointed officeholders of the county. It was so ruled in the case of *Hammond & Stephens v. Christian County*, 62 S. W. (2d) 844, l. c. 845, where the court said:

"In each of the foregoing cases, cited by appellant, the expense incurred by the county official for which the county

was held liable was in connection with the necessary equipment or care and maintenance of the office room or rooms or county property under his charge, and for the care of which he was responsible, or in the furtherance and performance of official acts and within statutes held to authorize reasonable expenditures for such necessary purposes."

Also, in the case of Smalley v. Dent County, 177 S. W. 620, 1. c. 623, where the court said:

"We have reached the conclusion, from the examination of the foregoing authorities, that the telephone was not only a public necessity in the circuit clerk's office in Dent county, but that the same should have been maintained by the county, at its expense, as a part of the furniture of said office."

Also, in the case of Motley v. Pike County, 233 Mo. 42, 1. c. 46, where the court said:

"Nor do we think there was error in the allowance for telephone service. The term 'other necessities' as used in the statute is sufficiently broad to cover this item. We are not living in the 'dark ages,' but in a day of progressiveness and enlightenment. Modern business is transacted by modern means and methods. In this day of the world the use of the telephone is in many instances as much of a necessity in the transaction of both public and private business as in the postal service. The use of the telephone has passed the period of mere convenience. It has reached the period of necessity.

We are of opinion that the plaintiff with the power to furnish his offices with 'other necessaries' had the right to engage telephone service to facilitate the business of his office with the general public. The testimony is that it was necessary, but even without testimony we would have to know what the general public knows with reference to a matter of this kind."

Also, in the case of Ewing v. Vernon Co., 216 Mo. 681, 1. c. 692, where the court said:

"There is not a word in the chapter (chap. 147), relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons, or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; and when we read in section 9057 that the recorder of deeds must give a bond conditioned that he will deliver up to his successor among other things, 'the furniture and apparatus belonging to the office, whole, safe, and undamaged,' we but gather (what we knew before) that the furniture and apparatus do not belong to the recorder, but to the county, and under Revised Statutes 1899, section 1777, are under the control and management of the county court. Turning to other cognate sections it becomes plain that unless the Legislature deliberately planned to legislate against recorders and in favor

of other county officers (an unthinkable position), it becomes plain that the county is to furnish the necessities in furniture, fixtures, etc., to preserve the county records and make them usable by and useful to the general public. No one reading statutes relating to clerks, probate judges, etc., can come to any other conclusion."

And the court in that case, at l. c. 695, further said:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'

"The statute relating to recorders ordains that he 'keep' his office, etc.; the word keep is one of wide and flexible meaning, one meaning being to maintain, to provide for. It involves the idea of continued effort in that line, i. e., that the office shall be carried on, enjoyed, etc. In this view of the case, the great breadth of the statutory word 'keep' permits of the notion that it was the legislative intent that the recorder of deeds should have the power to maintain and provide for his office in a reasonable way for the benefit of

the public, and (by implication) at the public expense, where county courts violate or renounce their duty in that regard."

Also, in the case of Kansas City Sanitary Co. v. Laclede County, 307 Mo. 10, l. c. 17, the court said:

"The defendant offered evidence tending to prove that the sheriff, upon whose order the goods were sold and delivered, had no authority to order the same and that they were not needed or necessary. This might be a good defense in so far as the goods sold and delivered for use at the court house and poor farm are concerned. Section 9507 requires that the agent purchasing supplies for the county be lawfully authorized, and this requirement is not done away with, even though the claim may not be defeated, because the prescribed legal steps have not been followed. No question of that sort can be successfully raised as to any part of the goods ordered for and used at the county jail. Under Section 12549 the jail is required to be kept in good and sufficient condition, and under Section 12551 the sheriff of the county has the custody, keeping and charge of the jail. He, therefore, has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition, which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. (Harkreader v. Vernon County, 216 Mo. 696.) The sheriff testified that the goods were needed and used at the court house, as well as at the jail. There was no testimony what-

ever tending to show that the goods ordered were not needed at the jail. Therefore, the circuit court should have directed a verdict for plaintiff, to the extent that such goods were used at the jail, and for that reason the judgment in defendant's favor cannot be sustained."

The rulings in all of the above cases were to the effect that county officers could purchase supplies, furniture, etc., necessary for the carrying out of the duties of the office. The main questions involved were questions of fact and not of law, that is, whether the things purchased were necessary. This rule of law has been changed to a certain extent by the County Budget Law, supra.

The County Budget Law consists of many sections, but Sections 10910 to 10917, inclusive, only apply to counties under 50,000 population, and Sections 10918 to 10935 apply to counties over 50,000 population. There is no provision in the County Budget Law which requires the county to appoint a purchasing agent to purchase supplies for all officers in counties under 50,000 population, but there is a provision for the appointment of a purchasing agent and accounting officer in Section 10932, which only applies to counties over 50,000 population. According to the last 1940 census, the population of Audrain County was 22,673, and the powers of the county court in regard to the County Budget Law are set out in Sections 10910 to 10917, inclusive.

Under Section 10915, every officer who expects to claim pay for services or to receive supplies to be paid for from the county funds shall submit to the county clerk certain information and an estimate as to the amount of money that should be budgeted to his department for the year.

Since the rule of law as set out in the cases in the first part of this opinion has not been changed as to counties under 50,000 population, the county court, which passes upon the estimate as given by the county officer for his salary and supplies, has control over the finances of the county to the extent that it may reduce his estimate. The county court can

revise and amend his estimate by virtue of Section 10917, R. S. Mo. 1939.

"County officers" have been defined in many cases. In the case of State ex rel. Buchanan County v. Imel, 242 Mo. 293, the court, at page 300, defined "county officers":

"The words 'county officers' have two well defined meanings. In their most general sense, they apply to officers whose territorial jurisdiction is co-extensive with the county for which they are elected or appointed. In a more precise and restricted sense, those words mean officers 'by whom the county performs its usual political functions, its function of government.' (Sheboygan County v. Parker, 70 U. S. 93, l. c. 96.)"

Also, in the case of State ex rel. Rucker v. Hoffman, 294 S. W. 429, l. c. 431, the court, in holding that a probate judge is not a county officer, said:

"The duties of official court reporters pertain wholly to the courts of which they are officers, and they perform no duties whatever relating to the functions of county government. The Supreme Court in the case of State ex rel. v. Imel, 242 Mo. 293, 300, 301, 302, 146 S. W. 783, 784, in holding that a probate judge is not a county officer, stated:

"The words 'county officers' have two well defined meanings. In their most general sense, they apply to officers whose territorial jurisdiction is co-extensive with the county for which they are elected or appointed. In a more precise and restricted sense, those words mean officers 'by whom the county performs its usual political functions, its

function of government." Sheboygan County v. Parker, 70 U. S. 93, loc. cit. 96 (18 L. Ed. 33).'"

This opinion covers all county officers, which excludes probate courts and circuit courts.

Under Section 10912, the officer claiming any payment for salaries or supplies, who does not include in his budget an itemized statement of the supplies he will require for his office, would not be entitled to purchase such supplies. It is mandatory that he furnish all of this information as to his salary and allowance for supplies before he can receive either salary or purchase supplies.

We are not holding that a county officer can purchase supplies that are not appropriated to him by the county budget, and he should keep within the budget in the purchase of all necessary supplies.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the County Court of Audrain County does not have the exclusive authority to purchase necessary supplies for all county officers.

It is further the opinion of this department that the county is liable for the payment of supplies purchased directly from vendors by any of the county officers of Audrain County providing that the budget of his department contains sufficient money to pay the claim.

Our holding in this opinion applies to all county officers of Audrain County.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General