

COUNTY COURTS: County courts may dispose of lands acquired
for courthouse, if same are not lands acquired
COURTHOUSE: and needed for county seat purposes.

November 27, 1942

Hon. Paul E. Bradley
Prosecuting Attorney
Jasper County, Missouri

11-30



Dear Sir:

This is in response to your request of recent date, which is as follows:

"About forty years ago the County Court of Jasper County acquired two lots in Joplin on which to erect a court house. Some years later the court house burned and since that time the County Court has rented rooms in Joplin for holding Circuit Court. The two lots are vacant and the County Court would like to sell them if it has the power and authority to do so.

"I would appreciate it if you would let me have your opinion as to the authority of the County Court in this respect."

Section 36 of Article VI of the Missouri Constitution, is 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."

Section 2480, R. S. Mo. 1939, is 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."

By these provisions of the Constitution and the Statutes it would seem that the county court would be authorized to sell the lands in question, if there are no other provisions of the law limiting or denying it such right.

In the case of Bayless v. Gibbs, 251 Mo. 492, the powers of county courts were discussed and there the court said:

"County courts are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void."

Also, in the case of State ex rel. Major v. Patterson, 229 Mo. 373, the court said:

"Under the constitution, Article 6, Section 36, providing that a county court shall have jurisdiction to transact all county business and such other business as may be prescribed by law, county courts are denied any rights except those expressly conferred."

And, in *Blades v. Hawkins*, 240 Mo. 187, the court held that county courts are given incidental powers. The court said:

"While the law is strict in limiting the authority of these courts, it never has been held that they have no authority except what the statutes confer in so many words. The universal doctrine is that certain incidental powers germane to the authority and duties expressly delegated, and indispensable to their performance, may be exercised."

In searching through the statutes we find a limitation on the power of the court to dispose of lands acquired for a courthouse in case such lands are "county seat" lands. Under Article 2, Chapter 100, R. S. Mo. 1939, provision is made for the establishment of "county seats" and the courts have held that lands purchased and dedicated for a courthouse, jail and other public county buildings in a county seat town shall be the permanent seat of justice. *State ex rel. Norman v. Smith*, 46 Mo. 60.

In *Van Pelt v. Parry*, 218 Mo. 680, 681, the court, in discussing a question similar to this, stated:

"Here, then, was a permanent appropriation and disposition of the land for the purpose of establishing a permanent seat of justice and that visible, actual, palpable appropriation for that important public purpose, coupled with acts in pais in platting the land into lots

and blocks, streets, alleys, lanes, avenues, public squares, etc., and dealing with the property by making sales of lots to build up a county town, made Lamar a permanent seat of justice to all intents and purposes and effectually for all time took the Parry forty out of the salable list of swamp lands as such. It was no longer swamp land but land appropriated for county seat ends -- i.e., county seat land. Barton county having irrevocably devoted it to county seat purposes, could not turn about in after years and trade or sell it as mere swamp land to a purchaser having full notice that it had been devoted to a seat of justice and that such purpose was alive, on foot, and being carried out. Its power to deal with it as swamp land was functus officio, we think. * * * * *

Since the county seat of Jasper County is at Carthage, then the court would not be restricted by the law applicable to "county seats."

CONCLUSION

From the foregoing it is the opinion of this department that the county court of Jasper county may sell real estate not needed for county purposes and not located at the county seat and used for a courthouse or jail.

Respectfully submitted,

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APPROVED:

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TWB:CP