

COURTHOUSE: County court has authority to provide additional courthouse space, but cannot pledge revenue for future years.

February 20, 1942

2-25

Hon. Tom B. Brown  
Prosecuting Attorney  
Edina, Missouri

FILE  
12

Dear Sir:

This will acknowledge receipt of your letter of February 11, 1942, requesting an opinion, as follows:

"The County Court of Knox County has requested an opinion from the Attorney General's office concerning the following matter.

"Knox County has a county court house, but it does not meet the demand for office space at this time. The county now rents additional office rooms. They desire to purchase a building in Edina for use as additional office space for governmental agencies, and for storage of county property.

"Do they have authority to purchase a building for that purpose? If so what is the proper procedure?

"If the county has the power to purchase the building can they enter into a contract to pay a yearly rental for four years for the same, with the provision that if the rentals are paid for the four years the lessors will deliver a deed for the property?"

In replying to your request, attention is called to the following brief quotation from the early case of *Wolcott v. Lawrence County*, 26 Mo. 272, l. c. 275:

"The county court is only the agent of the county, and, like any other agent, must pursue its authority and act within the scope of its power. In respect to many things that concern the county, it has a large discretion; but in reference to the erection of county buildings its authority is defined by a public law, and is special and limited. It can not act like general agents, whose acts may bind their principals if performed within the general scope of their agency, though in violation of private instructions unknown to those who deal with them; for it has no power over the subject except such as is given by law; and every person who deals with the county court, acting in behalf of the county, is bound to know the law that confers the authority. There is no difference in this respect between public and private agents; and if the county court exceeds its special and limited authority, conferred by the statute, in a material matter, the county will not be bound."

The above-mentioned case was one involving payment for construction of a courthouse.

Section 2480, Article 13, Chapter 10, R. S. Mo. 1939, sets out the powers of the county court, and 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."

Article 4, Chapter 100, R. S. Mo. 1939, treats of county buildings, and the following sections of the statutes are taken from said article and chapter.

"Sec. 13717. The county court of any county in this state shall have power to acquire by purchase, for such county, improved or unimproved real estate for a site for a court house, jail or poorhouse or infirmary; or, when the county owns such site or sites, to acquire by purchase improved or unimproved real estate as an addition to or enlargement of the same; and if the county court and the owner or owners of the real estate sought to be purchased for any of said purposes cannot agree upon the compensation to be paid therefor, or if for any other reason the title thereto cannot be acquired by contract, the county court of such county may proceed, in the name and on behalf of said county, to appropriate and condemn such real estate in the manner provided by article 2 of chapter 8, R. S. 1939, and the same proceedings shall be taken as are provided in said article for the condemnation of lands for other public uses, as far as the same may be applicable."

"Sec. 13718. The county court of any such county may pay for the real estate acquired under the provisions of

section 13717 out of any money in the county treasury belonging to the contingent fund or out of any surplus in any other fund at the close of any fiscal year, after the payment of all warrants drawn during such year against such fund and of all other previously issued and outstanding warrants against the same."

In connection with the above sections, attention is called to the following extract from the case of *Watson v. Kerr*, 312 Mo., 549, l. c. 561:

"It is the contention of appellant that the purchase of an infirmary site is not a 'current county expenditure' within the meaning of Section 12859 and consequently that such a purchase can be made only from funds derived from a special levy made in accordance with the provisions of Section 12860, or else from the proceeds of a bond issue voted for that purpose. But many years after the passage of the Cottey Act what are now Sections 9458 and 9459, Revised Statutes 1919, were enacted. They provide: 'The county court of any county . . . shall have power to acquire by purchase . . . improved or unimproved real estate for a site for . . . infirmary. . . . The county court . . . may pay for the real estate acquired . . . out of any money in the county treasury belonging to the contingent fund or out of any surplus in any other fund at the close of any fiscal year, after the payment of all warrants drawn during such year against such fund and all other previously issued and outstanding warrants against the same.' These provisions and those of the Cottey Act are of like efficacy, deal in part with

the subject-matter and should therefore be read together. (Decker v. Diemer, supra.) When so considered the buying of an infirmary site must be regarded as a current expenditure; in any event the county court is expressly authorized to pay for such a site out of taxes levied and collected for current county expenditures. As specific authority is given for the making of the payment out of the contingent fund, without imposing conditions or restrictions of any kind, there is no reason why warrants drawn for that purpose, in respect to the order of their payment, should not stand on a parity with other warrants drawn against the same fund."

Since the above decision was rendered, the County Budget Law has been enacted. But what is said above in regard to money in the contingent fund would seem to be applicable to the contingent fund under the Budget Act if there should be sufficient money in the contingent fund not otherwise appropriated.

It would appear to be within the power of the county court to purchase additional ground and erect additional office and courtroom buildings, or to purchase a building already constructed, if needed for public purposes of the county.

Your letter fails to state whether the county has on hand sufficient cash to make the purchase of the building. If it does not have, then it would be necessary to submit the question to the voters of the county under the statutes which authorize incurring indebtedness by a county, a county not being permitted to become indebted in excess of its anticipated revenue for the year in which the debt is incurred except by a vote of the people. Section 12, Article X, of the Constitution of Missouri is as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the

State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring of such indebtedness; such proposition may be submitted at any election, general or special: Provided, that with such assent any county may be allowed to become indebted to a larger amount for the erection of court house or jail, or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein; and provided further, that any county, city, town, township, school district or other political corporation or subdivision of the State, incurring any indebtedness requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide

for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same; \* \* \* \*"

In regard to the second question as to whether the county court has power to enter into a contract to pay a yearly rental for a building for four years, with a provision that if the rentals are paid for the four years the lessor will deliver a deed to the property, attention is directed to the portion of Section 12, Article X, of the Constitution.

In the case of Ebert v. Jackson County, 70 S. W. (2d) 918, a contract entered into by the County Court of Jackson County to lease a building for a term of four years was held void as in violation of Section 12, Article X, supra, the following language being used at l. c. 920:

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional promise made by the county on July 18, 1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose.

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the

contract became effective. It created a debt within the meaning of said section of the Constitution, and is void."

In the case of *Hawkins v. Cox*, 66 S. W. (2d) 539, a contract entered into by a special road district, for the purchase of machinery on the basis, \$500.00 down and \$500.00 per year for several years, was held void as to the amounts to be paid in future years, as a violation of the above constitutional provision. The following quotation is from this case at l. c. 544:

"The contract for the purchase of and payment for this road machinery made in February, 1928, is void at least to the extent it attempted to obligate the district for payments beyond the cash payment made at the time and the amount to be paid out of the revenues provided for 1928. *Anderson v. Ripley County*, 181 Mo. 46, 65, 80 S. W. 263."

#### CONCLUSION

If additional courtroom space, office space and storage space is needed for the public purposes of Knox County, the county court has authority to purchase or lease a building or erect a building. The building may be paid for in cash if there are sufficient funds available under the county budget to make the payment. If funds are not available for cash payment, it would be necessary to submit the question of the county becoming indebted to the voters. Any contract entered into which would attempt to pledge the revenue of future years would be invalid as to such future years.

Respectfully submitted

APPROVED:

W. O. JACKSON  
Assistant Attorney General

---

ROY MCKITTRICK  
Attorney General

WOJ:HR