

COUNTY COURTS: May apply reasonable annual rental of road machinery
PAUPERS: on purchase price of said machinery. Inmates of county
alms houses who are able to support self should not
remain there under certain conditions. County court
may grant relief to persons without regard to residence.

October 15, 1942

FILED NO. 57

Honorable Gordon J. Massey
Prosecuting Attorney
Christian County
Ozark, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion from this Department under date of September 17, and a supplemental request under date of October 7, 1942. The two requests read as follows:

"This county has been operating at a loss for several years, that is the expenditures have been exceeding the revenue. The county court has been levying a 10% illegal tax to try to take care of the deficit. The county court has been donating to the county agents office and other worthy causes in excess of \$1000.00 per year.

"Please advise me if the county court can lawfully make donations to the county agent and other worthy cause so long as the current revenue for any year will not take care of the expenses which the county must pay according to law.

"There is now in the county alms house at least one person who has not resided in the county for one year and there are also in said alms house people who can make their own living if they are discharged from said alms house. Please advise me if the county court can lawfully keep one not a resident of this

county and further if the can lawfully support one who is able to earn their own living.

"This county is not under Township organization. It has about half of the county incorporated in special road districts and the rest of the county is in one large road district. In 1938 the county court budgeted \$7000.00 for the purpose of buying road machinery to be used primarily in the common road district. The money used to buy this machinery came from general revenue and the county exceeded its income that year by more than \$8000.00 and still owes most of it. What steps can and should be taken to force the county court to put the money back where it belongs,"

"Referring to the contents of your letter I find that the county clerk did not give me the correct information. The facts are that the county court in 1937 bought road machinery under a lease agreement with the machinery company. The understanding was that when a certain amount had been paid the machinery belonged to the county. If default was made in the payment of the lease rental the company would take the machinery back.

"I investigated the record and find that in 1938 in class 3 the amount of \$1700.00 was set up to pay on grader note. In 1938 two items were set up in class 3. One for \$1456.00 for payment on grader and one for \$375.00. These amounts were paid out of general revenue set up in class 3. The balance of the payments made were from the funds found and placed to the credit of the common road districts. At the time these items were set up the county was in debt in all classes so far as I can find out.

"Another question has come up. A bridge has washed out. There are no funds now on hand to fix it with. The court wants to know if they can have the bridge repaired and pay it

in five yearly installments. They want to issue warrants or enter into a contract to that effect. I told them it could not be done but they want your opinion."

Your first inquiry deals with the authority of the county court to donate or contribute to the county agent's office and other worthy causes so long as the current revenue for any year will not take care of the expenses for the county under the law. Article X, Section 12 of the Constitution of Missouri is a direct prohibition against spending more money than received by the county, or can be reasonably and honestly anticipated as revenue. This section in part reads 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.
* * * * *

The County Budget Law, Sections 10910 to 10935, R. S. Missouri 1939, inclusive, placed counties more or less on a cash basis in that the anticipated revenue for a current year must be classified in five main classes and based on a budget approved by the county court and all parties participating in paying out such funds must sacredly preserve priorities. It is our opinion that the action of the county court or other officer participating in the issuance of warrants in excess of anticipated revenue of any current year and budget estimate is void and of no binding effect. No county court should ever participate in such donations in excess of the anticipated revenues and no warrant should issue for same, and if it does issue it subjects such officials to a suit upon their official bond. (Section 10917, R. S. Missouri 1939.)

In the third paragraph of your first request we find your next inquiry which reads:

"There is now in the county alms house at least one person who has not resided

in the county for one year and there are also in said alms house people who can make their own living if they are discharged from said alms house. Please advise me if the county court can lawfully keep one not a resident of this county and further if they can lawfully support one who is able to earn their own living."

Section 9590, R. S. Missouri 1939, provides that the county shall support and maintain poor persons who are inhabitants of their county and reads:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 9591, R. S. Missouri 1939, defines poor persons and reads:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

In King vs. Maries County, 297 Missouri 488, l.c. 496, the court announced a well established rule as to the power of the county court and said:

"It has been held uniformly that county courts are not the general agents of the counties, or of the State. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. * * * * * This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. * * * * *"

You state that there are persons in the county alms house who if discharged are able to make their own living and inquire if the county court can lawfully keep such people at the expense of the county. Of course this is a question of fact to be determined by the county court. If such a fact can be established then, unquestionably, the county court under Section 9591, supra, is exceeding its statutory authority in supporting such persons.

Section 9592, R. S. Missouri 1939, defines inhabitants as follows:

"No person shall be deemed an inhabitant within the meaning of this article, who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such poor person, or who shall have removed from another county for the purpose of imposing the burden of keeping such poor person on the county where he or she last resided for the time aforesaid."

The above provision requires one to have resided in the county twelve months next preceding the time any order is made respecting such persons.

Section 9594, R. S. Missouri 1939, however qualifies Section 9592, supra, by granting the county court authority to use its discretion and grant relief, without regard to residence, when such persons require assistance.

"The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

Therefore, we must conclude that the county court may exercise its discretion in granting relief to a person who under Section 9592, supra, cannot qualify as an inhabitant.

The last paragraph of your letter of September 17, deals with the purchase of road machinery and reads:

"This county is not under Township organization. It has about half of the county incorporated in special road districts and the rest of the county is in one large road district. In 1938 the county court budgeted \$7000.00 for the purpose of buying road machinery to be used primarily in the common road district. The money used to buy this machinery came from general revenue and the county exceeded its income that year by more than \$8000.00 and still owes most of it. What steps can and should be taken to force the county court to put the money back where it belongs."

This Department has heretofore ruled on the right of the county court and road commissioner to purchase road machinery under almost every condition. However, in all cases the facts seem to be a little different. It is well settled now that the county court cannot contract for such road machinery, the payments for which are to be made over a period of several years. In support of this contention we refer you to *Hawkins et al., v. Cox*, 66 S. W. (2d) 539. In that case the special road district desired to purchase road machinery amounting to \$2500.00, paying \$500.00 cash and agreeing to pay \$500.00 a year and interest thereafter. The special road district at the time had only \$600.00 on hand and the revenue for the year of the purchase of such road machinery was approximately \$600.00. The court held that the special road district could not purchase such road machinery on the above terms for the reason the commission could not obligate the revenue for future years without a vote of the people in the district. It would be void because in violation of Article X, Section 12, supra, which prohibits the incurring of an indebtedness in excess of anticipated revenue for that year without a vote of the people. It was also held in *Ebert vs. Jackson County*, 70 S. W. (2) 918, that a rental contract extending over a period of four years to pay rent in advance on the first day of each month for use of certain properties created a debt within the meaning of Article X, Section 12, supra, in that it was anticipating future revenue and exceeding the anticipated revenue for the year in which the contract became effective and was void. In so holding the court said, (l.c. 919-920):

"And in *Trask v. Livingston County*, 210 Mo. 582, loc. cit. 594, 600, 109 S.W.

656, 659, 37 L. R. A. (N.S.) 1045, we also said:

"It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created and prohibits the anticipation of the revenues of any future year. Any other construction would render section 12 of article 10 nugatory; for, if the county court of Livingston county in September, 1889, could anticipate the revenue of 1890, it could also anticipate the revenues of 1891 and 1892, and would leave the power of the county, with reference to indebtedness, what it was before the Constitution of 1875 was adopted. * * *

"Clearly the county court was not authorized to appropriate revenues, which were to be derived from taxation in the year 1890, when such taxes had never been assessed, levied, or collected. While the county court may in any one year draw warrants, after the revenue has been provided, and the taxes levied within the scope of the levy and income for such year, it is too plain for argument that the Constitution forbids the anticipation of the revenues of any subsequent years. If not, all that has been said in regard to the force and effect of section 12 of article 10 of the Constitution, to the effect that its purpose was to put counties upon a cash system, instead of the old credit plan, has been in vain."

* * * * *

"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."

Therefore, if the contract for the purchase of the road machinery amounts to an unconditional promise to pay a fixed sum at some future specified date, the contract is void and the court would not be authorized to enter into same.

The situation in this case is somewhat different in that, apparently, under the lease the county is only renting the road machinery from year to year with the privilege of sometime in the future, if they so desire and have sufficient revenue, purchasing such road machinery and applying the rentals heretofore paid on the purchase price of the road machinery. There is apparently no unconditional promise to purchase or rent said road machinery. It is within the discretion of the county court as to whether they shall or shall not purchase or rent said machinery. In case the decision is to not purchase said road machinery all the county court has expended is a fair rental for said machinery. The writer is of the opinion that this is legal, providing that it is not a mere subterfuge to circumvent the prohibition in Article X, Section 12, supra. This is a question of facts. If the annual rental is in excess of a fair rental value for the use of said machinery and in fact constitutes a payment on said machinery instead of a rental charge then the contract would be void. It appears to the writer

that if the county court has the opportunity to save the county money and the contracting company is willing to credit the annual rentals heretofore expended on such road machinery against the purchase price of said machinery, that the county should not be penalized, when in fact all they are doing is paying a normal annual rental charge for the use of said machinery without any further obligation whatsoever.

In *Hight vs. City of Harrisonville*, 328 Missouri 549, 1.c. 559, the city of Harrisonville entered into a contract with Fairbanks, Morse and Company to purchase two engines and other equipment for use in its light plant. In part payment of said equipment it was agreed that the city would adopt a resolution providing for the creation of a special fund in which all the receipts for the products and services of said plant should be deposited and to credit such fund at regular established rates for all products or services of such plant used by the city or any department thereof for any and all public purposes. The court held that this was mere subterfuge to evade Article 10, Section 12 of the Missouri Constitution for the reason that the city had no fund available for such purposes and if it purchased its own current then funds for this purpose must come from funds raised by taxation or from funds which must be replenished by funds raised by taxation. In so holding the court said:

"It is also evident that the parties knew this payment by the city must be from funds raised by taxation, or from a fund which must be replenished by funds raised by taxation. Therefore, they resorted to this subterfuge in an effort to evade the constitutional prohibition. The trick is so transparent that we do not wonder at the failure of defendants to undertake a defense of this provision of the contract. 'Whenever courts see such attempts at concealment they brush away the cobweb varnish,' and show the transaction in its true light. They see things as ordinary men do, and see through them. Whatever might be the form or color of the transaction, the law looks to the substance of it. In all such cases it is, in truth, rather the particular transaction than the statute which is

the subject of construction; and if it is found to be in substance within the statute, it is not suffered to escape from the operation of the law by means of the disguise under which its real character is masked.' (Maxwell, Interp. State., 133, 134.)

"The bar to the constitutional prohibition is clear, and we should not permit it to be evaded. The contract must be held invalid. The chancellor held it so for this reason and for other reasons. * * * * *

In the case of Bell vs. City of Fayette, 325 Missouri 75, l. c. 92, Fairbanks, Morse & Company were selling the City of Fayette diesel engines for a municipal power plant. It was agreed that they were to be paid from the profits earned by the diesel engines. The court held that such expenditures did not constitute a debt under Article X, Section 12; that no tax could be levied to collect said payments; that it was a contingent liability which might or might not accrue. In so holding the court said:

"Since there is no evidence offered, and no fact in the record to the contrary, we must assume that the plan provided in the contract for ascertaining that saving, the direct earnings of the engines, is practical, adequate and sufficient for the purpose. It is not contended otherwise. So the ordinance and contract to pay those installments in the manner provided is not a debt within the prohibition of Section 12, Article X, of the Constitution. In no event can a general tax be levied to pay the installments; these payments constitute no lien upon the power plant nor upon its revenue. It is a contingent liability which may or may not accrue. It can be paid only on the con-

tingency that, over and above the net revenue which the city derives from the consumers of water, power, light, etc., as the plant was operated before the purchase of the engines there shall accrue an additional profit caused by the operation of the engines. There is no aspect of that situation which could make the agreement to pay in the manner provided a debt of the city. It is a contingent purchase, the property to be paid for only out of the net earnings which it produces: the seller takes its chance on that contingency."

If the arrangements made in the above case did not constitute a debt to the city under Article X, Section 12, of the Constitution of the State of Missouri then how could a lease or contract for the use of road machinery, where the title is always in the corporation and the county being under no obligation whatsoever, constitute a debt? We think that it does not. If the amount paid annually as rental exceeds the normal rental value for such road machinery or if there is an unconditional promise to purchase or rent said road machinery in the future it is not a legal transaction and void. Furthermore, as hereinabove stated, priorities of classes in the budget must be sacredly preserved. Section 10910, R. S. Missouri 1939, reads in part:

"* * * * * The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

There is no way that the current revenue can be used to replace any money improperly used in 1938 and subsequent years. However, any officials responsible for such expenditures are subject to a suit on their official bond under Section 10917, R. S. Missouri 1939.

In your supplemental letter of October 7, you further inquire if the county court in the absence of any funds on hand

Hon. Gordon J. Massey

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may repair a bridge that has been washed out and pay for such repairs over a period of five years. In view of what has already been said it is the opinion of this Department that such repairs cannot be paid for in this manner.

Respectfully submitted

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APPROVED:

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