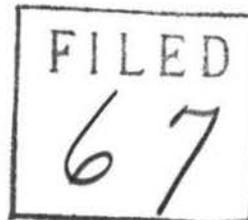


COUNTY CLERK; COUNTY COURT;  
COUNTY BUDGET ACT; - County Clerk of Jackson County  
is the accounting officer to  
certify as such on claims against  
the county.

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December 14, 1942

Mr. Ben Nordberg  
County Clerk Elect  
County Assessor's Office  
Courthouse  
Kansas City, Missouri



Dear Sir:

This is in reply to your recent request for an opinion concerning the duties of the county clerk of Jackson County.

Your request consists mainly of three questions:

I

First: Who shall act as budget officer of Jackson County?

Section 10922 of Article 2, Chapter 73, R. S. Missouri, 1939, which is the County Budget Law, provides as follows:

"In all counties of this state now or hereafter having a population of more than eighty thousand inhabitants, according to the last federal decennial census, the presiding judge of the county court shall be the budget

officer of such county, or the  
county court in any such county  
may designate the county clerk as  
budget officer in any such county.

\* \* \* \* \*

The above partial section is unambiguous, and plainly states that the presiding judge of the county court shall be the budget officer, unless the county court designates the county clerk as budget officer.

Since the population of Jackson County is 477,828, according to the last decennial census, the above partial section is applicable to Jackson County.

CONCLUSION

It is, therefore, our opinion that unless the county court designates the county clerk as budget officer, the presiding judge of such county court shall be the budget officer.

II

Your second question is:

Can the county court designate an employee of its own naming, without statutory authority, who shall keep the principal records of the county when such responsibility has been specifically fixed on the county clerk by Section 13823 R. S. Missouri, 1939?

We are presuming that when you refer to the county clerk's keeping of the principal records of the county, that you mean: Can the county court designate an employee who shall act as an accounting officer, as defined in Section 10934 R. S. Missouri, 1939?

Section 10932 R. S. Missouri, 1939, partially reads as follows:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment, or services other than personal made by the officer in charge of purchasing in any county having such officer. No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating: \* \* \* \* \* Contracts which provide that the person contracting with the county shall, during the term of the contract, furnish to the county at the price therein specified the supplies,

materials, equipment, or services other than personal therein described, in such quantities as may be required, and from time to time as ordered by the officer in charge of purchasing during the term of the contract, need not bear the certification of the accounting officer as herein provided; but all orders for such supplies, materials, equipment, or services other than personal shall bear such certification. In case of such contract, no financial obligation shall accrue against the county until such supplies, materials, equipment or services other than personal are so ordered and such certificate furnished." (Underscoring ours.)

Under the above partial section, which is very similar to the section applying to the State Budget Act, no contract shall be binding on the county, unless it be in writing, and unless there is a balance to the credit of the appropriation, to which the same is charged, and unless it bear the certification of the accounting officer.

Section 10934 R. S. Missouri, 1939, defines "accounting officer" as follows:

"Wherever in this act the term of 'accounting officer' shall appear, it shall be deemed to mean the county clerk, county comptroller, county auditor, accountant or other officer or employee keeping the principal records of the county."

Under the above section the accounting officer can only be the county clerk, county comptroller, county auditor, accountant or other officer or employee keeping the principal records of the county.

Section 13823 R. S. Missouri, 1939, reads as follows:

"It shall be the duty of the clerk of the county court: First, to keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the amount he may have disbursed between the periods of his respective settlements with the court; second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom; third, to file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted in evidence in all courts of law and elsewhere; fourth, to issue warrants on the treasury for all moneys ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof."

Under this section it is the duty of the county clerk to keep the principal accounts of the county. That it was the duty of the county clerk to keep the principal accounts of the county was held in the case of Ward v. Christian County, 111 S. W. (2d) 182, 1. c. 185, where the court said:

" \* \* \* Moreover, section 12161, R. S. 1929, Mo. St. Ann. Sec. 12161, p. 6445, makes it the duty of the county clerk 'to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom.' \* \* \*"

Since Section 10934, supra, definitely states that the accounting officer can only be the clerk, county comptroller, county auditor, accountant or other officer or employee keeping the principal records of the county, and, since Section 13823, supra, specifically states that the county clerk shall keep the principal records of the county, then, without any additional authority, it is the duty of the county clerk to act as the accounting officer, and it is his duty to certify that there is sufficient money to pay any claim under any written contract entered into by the county, or the heads of any county department, before the same shall be a legal contract, as set out under Section 10932, supra. Also, in supporting this view we find that Jackson County is not authorized to have a county comptroller, county auditor or accountant. The only counties that are entitled to a county comptroller are counties having a population of more than 200,000 inhabitants and less than 400,000 inhabitants, according to the last decennial census. This does not include Jackson County, for the reason that Jackson County has a population of 477,828. In counties having a population between 200,000 and 400,000, as hereinbefore set out, a county comptroller may be elected, in accordance with Section 10919 R. S. Missouri, 1939, which is part of the County

Budget Act, which was amended merely as to the salary of the county comptroller, by the Laws of Missouri, 1941, page 649. As to the term, "county auditor", or "accountant", as mentioned in the definition of "accounting officer", in Section 10934, supra, we find that in Article 10, Chapter 100, Revised Statutes of Missouri, 1939, there is a provision for the election of a county auditor in counties in this State in which there is a city now containing, or which may hereafter contain, 50,000 inhabitants and less than 150,000 inhabitants. This section does not apply to Jackson County. We also find that in Article 11, Chapter 100, there is a provision for the election of county auditors in counties having a population of more than 80,000 and less than 150,000, in which the circuit court is held in more than one place. This does not apply to Jackson County. It is common knowledge that at the present time, and in the past, there has been a county auditor in Jackson County, but, after a careful research, we do not find any provision for a county auditor in counties of the population of 477,828.

It is true, under Section 13824 R. S. Missouri, 1939, which applies to Jackson County, there is a provision that reads as follows:

" \* \* \* Provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

It is very obvious that the employment of such an auditor is not permanent, but is merely for the purpose of the checking up of not all of the county officers, but the temporary employment of the check-up of one or more of the county officers. This section, under no construction can be interpreted to mean that counties having a population such as Jackson County can have a permanent county auditor.

Under Section 10933 R. S. Missouri, 1939, the acting officer shall be personally liable, and liable on his bond, for the amount of any obligation incurred by his erroneous certification as to the sufficiency of an appropriation, or of a cash balance, or for any warrant drawn when there is not sufficient amount, unencumbered, in the appropriation, or a sufficient unencumbered cash balance in the fund to pay the same, or for the payment of any amount not legally owing by the county.

It also provides for the giving of a bond for the faithful performance of his duties, to be approved by the county court and any premiums on such bonds shall be paid by the county.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that the county clerk of Jackson County is, and shall be the accounting officer who shall certify before any contract shall be binding, upon the county, that there is sufficient balance, unencumbered, to the credit of the appropriation to which the same is to be charged, and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred.

III

Your third question is:

December 14, 1942

Who shall prepare the financial statement of the county, as set out in Section 13827 R. S. Missouri, 1939, (which section applies to each county in this State?

In answer to this question, we are enclosing a copy of an opinion rendered by this office to Hon. Alvin H. Juergensmeyer, Prosecuting Attorney, Warren County, Warrenton, Missouri, dated November 12, 1942, in which we held that the county court can appoint and designate any one to prepare the financial statement, but if it fails to designate any person to prepare the financial statement, then it is the duty of the county clerk to prepare the financial statement and he shall receive, as compensation for the preparation, a certain sum to be paid him in addition to his regular salary.

CONCLUSION

We are, therefore, of the opinion, in view of the authorities set out in the above mentioned, and enclosed opinion, that the county clerk is not authorized and compelled to prepare the financial statement, as set out in Section 13827 R. S. Missouri, 1939, if the county court should designate of record any other person to prepare the financial statement.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

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ROY McKITTRICK  
Attorney General of Missouri

WJE:RW