

COUNTIES: County courts should transact all "county  
COUNTY BUSINESS: business," which includes purchase of  
material and supplies for county highway  
system.

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December 22, 1942

Hon. John H. Thompson  
Highway Engineer  
Highway Department  
Jackson County  
Kansas City, Missouri



Attention: Mr. D. W. Leonard  
Chief Deputy

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of the authority of the County Highway Department to do its own purchasing.

From your letter it seems that the County Court is insisting that such purchases be made through the County Court by its purchasing agent.

Section 36, Art. VI, of the Constitution of Missouri, 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, provides 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."

In the case of State ex rel. Buckner et al. v. McElroy, 274 S. W. 749, the question of the validity of a statute which authorized the board of paroles to contract for expenditures for government, management and maintenance of certain eleemosynary institutions in that county was raised. In the opinion the court quoted the order of the county court providing for a purchasing agent. The order reads as follows, l. c. 750:

"The court orders that all supplies of whatever nature for every department, court, board, officer, or employee of this county shall hereafter be purchased only by requisition submitted to and approved by the county court before any such purchase shall be made, and that said purchase shall thereupon be made in due course by the lawfully constituted purchasing agent of this county, and that any purchase made otherwise than as hereinbefore set out is illegal and void and constitutes no valid claim or legal or binding charge against this county therefor.

"And the court orders that due public notice hereof be made by publication in two newspapers published in Independence, Mo., and in two newspapers published

daily in Kansas City, Mo., and also in the Daily Record of Kansas City, Mo., once a week for four consecutive weeks. Approved unanimously; Judge Hayes giving as his reason for voting for said motion that he desired a clear and distinct understanding as to whether or not the county purchasing agent was the legally authorized person to make all purchases for the county."

The constitutionality of the act was raised because it was contended by the county that under Section 36, Art. VI, supra, the legislature could not take away from the county court the authority to control and regulate the expenditure for the eleemosynary institutions.

In treating the question the court said, l. c. 751, 752:

"By law these courts have been established so as to consist of a presiding judge (to be elected by the whole county) and two associate or district judges to be chosen by the electorate of their respective districts. But what we want to emphasize is the fact that the court is of constitutional origin, and its jurisdiction fixed by the Constitution. In the language of the organic law, such court 'shall have jurisdiction to transact all county \* \* \* business.' Other business may be added to its jurisdiction by law, but no law can take from it that which the Constitution expressly gives; i.e., that it shall transact all county business. By section 2574, R. S. 1919, such court is given control of all county property, both real and personal, and with it the added authority to purchase, lease, and deceive by donation any property, real or personal, for the county. Likewise we find the power to sell property belonging to the county, and to audit and settle all demands against the county. Much of this

section has stood for many years, and is and was a legislative construction of the Constitution when it speaks of transacting county business. The lawmakers understood that the transacting of county business meant the control of all county property, whether such property was in the nature of either penal or eleemosynary institutions. The lawmakers would have just as much power to place the county jail, or the poor farm, under the control of a parole board, as they would have to place the three institutions mentioned in the pleadings herein, or, to broaden the field, the divers state eleemosynary and penal institutions of the state could as well be placed in a board of supreme or circuit judges. The management of county and state property, having no direct connection with the work of the judges, should not be placed in the hands of judges. It has been ruled that courts can appoint agents and officers connected with the court, and look after the property wherein the courts are held, and many things incidental to the workings of courts, but such is not the case here. For that reason we do not discuss or pass upon such matters. Here the power is conferred, by the Constitution, upon the county court of Jackson County to manage and control these institutions and no mere legislative act can thwart the Constitution. Because a juvenile judge sends a boy or a girl to some kind of a county institution does not authorize the control of such institutions by such judges. The management, control, and upkeep of such institutions have been lodged by the organic law in another forum."

The rule of construction that "It is the duty of courts in construing two or more statutes relating to the same subject, to read them together and to harmonize them, if possible, and to give force and effect to each" in the case of Little River Drainage Dist. v. Lassater, 29 S. W. (2d) 71, may be applied here.

Referring to the County Highway Engineer Act, Art. 9, Chap. 46, R. S. Mo. 1939, we find that the following portion of Sec. 8660 has been held in the case of State ex rel. v. Southern, 265 Mo. 275, to apply to Jackson County, Missouri:

"\* \* \* Provided, however, that in all counties in this state which contain or which may hereafter contain more than fifty thousand inhabitants, and whose taxable wealth exceeds or may hereafter exceed the sum of forty-five million dollars, and which adjoin or contain therein, or may hereafter adjoin or contain therein, a city of more than 100,000 inhabitants by the last decennial census, the county surveyor shall be ex officio county highway engineer, and his salary as surveyor and ex officio county highway engineer shall be not less than three thousand dollars and not more than five thousand dollars, as may be fixed by the county court, and all fees collected in such counties by the surveyor, for his services as surveyor, shall be paid into the county treasury, to be placed to the credit of the county revenue fund: Provided, also, that in the counties last above mentioned the county surveyor, as surveyor and ex officio county highway engineer, may appoint, subject to the approval of the county court, such assistants as may be necessary, and no assistant shall receive more than twenty-one hundred dollars per annum: \* \* \* \* \*"

Section 8659, R. S. Mo. 1939, provides that the county highway engineer shall maintain an office at the county seat of the county of which he is an officer, at the expense of the county and that it shall be his duty to keep and carefully preserve all books, plats and papers pertaining to his office in the room so provided.

Section 8661, R. S. Mo. 1939, provides that the county highway engineer shall be the custodian of all tools, material and machinery belonging to the road districts and the county, except as otherwise provided by law.

Section 8662, R. S. Mo. 1939, provides that the county highway engineer shall have direct supervision over all public roads of the county and over the road overseers and of the expenditure of the county and district funds made by the county road overseers; that he shall have supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed unless approved by the county highway engineer, and no county court shall issue warrants in payment for road work or for any other expenditure by road overseers until the claim therefor shall have been examined and approved by the county highway engineer.

Section 8663, R. S. Mo. 1939, provides that the county highway engineer shall make personal inspection of the condition of the roads, culverts and bridges of each district as often as practicable and upon complaint in any district it shall be the duty of the county highway engineer to at once visit said road and investigate the complaint, if written and made by three freeholders, and if necessary to cause such road to be placed in good condition.

We do not find any case in which the constitutionality of the Highway Engineer Act has been raised. The presumption is that it is constitutional and it should be given such a construction. If the Highway Engineer Act deprives the county court of any of its constitutional authority as given by Sec. 36, Art. VI, supra, then, under the authority of the case of State, ex rel. v. McElroy, supra, the Highway Engineer Act, or such portions thereof that do so, would be invalid.

While the County Highway Engineer Act does prescribe certain duties to the Engineer, yet we do not find where it delegates to this official the duty of purchasing materials, supplies and equipment for highways.

The Budget Act, which makes the presiding judge of the county court, in counties containing a population of over 80,000, the budget officer, provides that the various departments and officers shall submit to the budget officer estimates of their needs for the ensuing year. Secs. 10922, 10923, and 10924, R. S. Mo. 1939.

Section 10931, R. S. Mo. 1939, provides in part as follows:

"Except as in this section otherwise specified, all offices, departments, courts, institutions, commissions, or

other agency spending moneys of the county, shall perform the duties and observe the restrictions set forth in the preceding sections relating to budget procedure and appropriations.

\*\*\*\*\*"

Section 10932, R. S. Mo. 1939, provides in part 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. \*\*\*\*\*"

Section 10933, R. S. Mo. 1939, provides in part as follows:

"\* \* \* Any officer purchasing any supplies, materials or equipment shall be liable personally and on his bond for the amount of any obligation he may incur against the county without first securing the proper certificate from the accounting officer. Such other officers as the county court may require shall each give surety bond in such amount as may be fixed by order of the county court for the faithful performance of his duties and for a correct accounting for all moneys and other property in his custody.

\*\*\*\*\*"

By these sections it would seem that the lawmakers have intended for the purchase of supplies, materials or equipment by the officer who is at the head of a department or office. Such officer being made liable on his bond in case he makes

such purchases without first securing proper certification from the accounting officer.

In speaking of the question of whether the County Budget Act deprives the county court of its constitutional power the court, in *Traub v. Buchanan County*, 108 S. W. (2d) 340, 342, said:

"The first contention, that the budget law is invalid, because by it the legislature deprived the county court of its constitutional power to transact the business of the county and vested this power in the auditor, is without merit. The effect and intent of the budget law, as we understand it, is to compel, or at least to make it more expedient for the county courts to comply with the constitutional provision, section 12, art. 10, Mo. Constitution, which provides that a county shall not contract obligations in any one year in excess of the revenue provided for that year. The budget law leaves the transaction of business to the county courts. But the law provides (section 19, p. 350, 1933 Laws (Mo. St. Ann. Sec. 12126s, p. 6434):

"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."

"No power possessed by the county court was thereby curtailed. The budget officer simply determines whether sufficient money

is provided with which to pay the obligation intended to be incurred by any contract or order presented to him for indorsement. This is a mere matter of bookkeeping. If the cash is on hand or has been provided for, it is the duty of the auditor or budget officer to make such indorsement upon the order or contract. If not, he merely refuses to make the endorsement. Prior to the enactment of the budget law, a county court had no right to incur obligations in any one year in excess of the revenue provided for that year. By the enactment of the budget law, the Legislature has merely provided ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income. The power of the county court not having been curtailed by the enactment of the budget law, the point made by respondent is without merit and is ruled against him."

The court, in this case, took the view that the constitutional powers of the county court are not curtailed by the Budget Act.

In the Buchanan County case, supra, the suit was based on a contract entered into by the County Engineer of that county for services with private individuals to work for the county. The court in that case held that the contracts were not binding on the county because the county budget act had not been complied with.

In Carter-Waters Corporation v. Buchanan Co., 108 S. W. (2d) 914, an action was involved in which the purchase of road materials was in controversy. In that case it will be noted that the purchase was made with the approval of two judges of the county court. The portion of that opinion pertinent to the question here, is as follows:

"\* \* \* Here, instead of the evidence making a conclusive case for recovery, it wholly fails to show any cause of

action against the county because it appears that there was no order of the county court made of record authorizing the purchase; \* \* \* \*"

Here, it will be seen that the court took the view that purchases for road materials in counties such as Buchanan County should be made by order of the county court. Since Buchanan County and Jackson County are within the same class so far as the County Highway Engineer Act is concerned, then the same rule would apply to Jackson County that the court applied to Buchanan County in the Carter-Waters case, supra.

Since the County Highway Engineer Act does not provide for the purchase of supplies and materials for Highway purposes, by the County Engineer, and since the courts have construed the Budget Act to the effect that it was not intended to deprive the county courts of their constitutional powers, then applying the principle announced by the court in the McElroy case, supra, the county court under its constitutional authority to "transact all county business" would be the body which should make the purchase of materials and supplies for the county highways.

#### CONCLUSION

It is, therefore, the opinion of this department that the the purchase of materials and supplies for the highway department of Jackson County, Missouri, should be authorized and approved by order of the County Court of Jackson County, Missouri.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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