

COUNTY COURT: Authority to settle or compromise for an
BONDS: amount less than sued for on surety bond.

November 26, 1943

Honorable William S. Thompson
Prosecuting Attorney
Mercer County
Princeton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of November 20th, 1943, which reads:

"Where action is pending in the Circuit Court wherein the State of Missouri ex rel Mercer County, Missouri, seeks to recover from the sureties on the official bond of the County Treasurer sums alleged to be wrongfully converted by the Treasurer is there legal authority for the compromise of such action with the approval of the Circuit Court by which compromise the plaintiff accepts a sum of money less than amount sued for in the action?"

"It has just come to my knowledge that such an offer of compromise may be offered in the suit wherein the State of Missouri ex rel Mercer County, Missouri, is plaintiff, and Cecil E. Ogle et al are defendants, which suit is set for trial on Monday, November 29th 1943.

"Since the suit will be definitely for trial on that date I am compelled to ask for your opinion prior to that date. I regret having to ask for this opinion in so short a time."

We seriously doubt if this opinion can be officially approved in time to reach you by November 29th, 1943, as re-

requested in your letter. However, we shall do the best we can by that time.

In rendering this opinion we are assuming that you and the County Court seriously doubt the solvency of the sureties upon the surety bond of the Treasurer and are of the opinion that it would be advisable and beneficial to the County under the circumstances to enter into a settlement, or compromise, for an amount less than you are attempting to recover in your suit against the sureties, with the approval of the Circuit Court wherein the action against the sureties is now pending.

Under Section 36, Article VI of the Constitution of the State of Missouri, the County Court is vested with jurisdiction to transact all county and other business as provided by law, and reads:

"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."

The Legislature, in fulfilling its duty, has put into effect such power as is vested in the county by virtue of Section 36, Article VI, supra, by enacting Section 2480, R. S. Mo. 1939, which reads:

"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."

Section 13764, R. S. Mo. 1939, further provides: that whenever notes, bonds, bills, contracts, covenants, agreements or writings made whereby any person shall be bound to any county for the payment of money or any debt or duty, the county shall be vested with all rights, interests and actions which would be vested in any individual in any such contract made directly with him. Section 13764, supra, reads as follows:

"All notes, bonds, bills, contracts, covenants, agreements or writings made whereby any person shall be bound to any county, or to the inhabitants thereof, or to the governor, or to any other person, in whatever form, for the payment of money or any debt or duty, or the performance of any matter or thing, for the use of any county, shall be valid and effectual to vest in such county all the rights, interests and actions which would be vested in any individual, in any such contract made directly to him."

The foregoing statutory provision is very broad and gives to the county court the same rights as is vested in any individual in such contract made directly to him.

Under Sections 13765, and 13767, R. S. Mo. 1939, the county may sue and be sued.

We think the Supreme Court, in the case of *The St. Louis, Iron Mountain & Southern Railway Company v. Anthony*, 73 Mo. 431, l. c. 434, deals with this principle of law, and states as follows:

"The county had sued plaintiff for taxes, and recovered a judgment in the circuit court of Washington county, which this court reversed and remanded, and, thereupon, a compromise was agreed upon between the parties, by the terms of which plaintiff was to pay a given sum in settlement,

and has so far complied with the agreement, and the collector, in disregard of that agreement, was proceeding to collect the original amount and interest and penalties.

"It is now contended that the county had no authority to make the compromise in question, or any compromise whatever. We are not of that opinion. The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes were levied for the benefit of the county. The beneficial interest was in the county, and it is for the public interest that she should have the right to settle, by compromise, questionable demands which she may assert. Must the county prosecute doubtful claims at all hazards, regardless of costs and expenses, and is it for the public good that the right to settle such demands by compromise be denied her? As was said by the supreme court of New York in the case of the Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation, it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawal or by agreement with its adversary.' The same doctrine was sanctioned in the Supervisors of Chenango County v. Birdsall, 4 Wend. 453."

It would appear from the foregoing decision that the County Court has the authority to make a settlement or compromise on the best terms available under the circumstances, after suit is instituted for recovery of money, if there be considerable doubt as to the possibility of recovering the full amount sued for; of course, at all times acting in good faith for the best interests of the county.

It is true County Courts are not general agents of the county and their powers are limited and defined by statute, also, any act committed outside such statutory authority

will be considered void.

In *Morris v. Karr*, 114 S. W. (2d) 962, l. c. 964, 342 Mo. 179, l. c. 183, the court said:

"In *Sturgeon v. Hampton*, 88 Mo. 203, at page 213, the rule was early announced which has been generally recognized in this state as follows: 'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

Notwithstanding the above decision, a well established principle of law relative to the jurisdiction of county courts, we believe the County Court, as has frequently been held of other agencies, under statutory authority not only has those powers granted by statute, but also those powers which may be fair and naturally implied from such expressed statutory rights.

In *Sheidley v. Lynch*, 95 Mo. 487, l. c. 497, the court, in so holding, said:

"So in the case of H. & St. J. R. R. Co. v. Marion County, 36 Mo. 303, it is said that the county court is the agent of the county, and may lawfully and of right do whatever is necessary to carry out and execute the trusts reposed in it. So in the case of Walker v. Linn County, 72 Mo. 650-3, it is said: 'That a county court is invested with such powers only as are expressly conferred upon it by statute, or such as may be fairly and necessarily implied from those expressly granted, we think cannot be questioned.' * * * * *"

In Hooper v. Ely, 46 Mo. 505, we find a decision which probably throws some light upon this question. In that case the sheriff and collector of the county had absconded. The court held that the county could not reimburse one of the sureties for going after the officer, since the sureties were abundantly responsible for any amount the sheriff and collector owed the county, and such authority did not come within the county court's jurisdiction to control and manage the real and personal property of the county, for the reason that such expenditure was for the personal benefit of the sureties and not the county. The court did, however, hold that if the liability was not secured and, by bringing the sheriff and collector back, it did help recover the loss, the expenditure might have been justified. In so holding the court at l. c. 507 said:

"* * * It may be admitted that if the liability had not been properly secured to the county, and there was a reasonable prospect of obtaining for the county what was actually obtained by the sureties, the County Court, as an incident to its power spoken of, and to its duty to enforce settlements with collectors, might incur reasonable expense in the pursuit of the defaulter. But in the case under consideration the county authorities did not act for the county, but for the signers of the bond alone."

Thereafter, in the above case, a suit upon the sheriff's and collector's bond was filed in the circuit court and a judgment was entered by consent for over \$5,000 with a stay of execution for twelve months, and an agreement that it might be discharged by county warrants. All of which indicates that some settlements and compromises have heretofore been sanctioned by the courts.

In 15 C. J. Sec. 287, page 586, we find the following approving settlements and compromises, and in part reads:

"* * * Also compromises and settlements of claims owing to the county, or litigation based on such claims, are generally upheld by the courts in the absence of a showing of fraud or collusion. * * *"

CONCLUSION

Therefore, it is the opinion of this department that if you and the County Court believe that the sureties on this bond of the Treasurer are not solvent and the County would benefit, under the facts and circumstances, by a settlement or compromise, with the approval of the Circuit Court such a settlement or compromise would be valid and binding.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

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