

COUNTY COURTS: No statutory authority to sell, discount or assign notes or bonds.

April 10, 1944



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Mr. Marr:

This Department acknowledges receipt of your letter of April 4, 1944, requesting the opinion of this office. Your letter of request reads as follows:

"A debtor of Morgan County, Mo. died intestate, and owed the county a debt secured by a note and mortgage on some real estate. The wife did not sign the note, but did sign the deed of trust. The wife wishes to protect her interest in the real estate by paying off the mortgage and the note. The wife-widow, wants to be subrogated to the estate, and stand in the shoes of the county on this first lien. She wants to put her money into the debt and security, but wants to be ahead of the other creditors of the estate to extent of the amount she is paying.

"She wants to have the county either assign the note and deed of trust, or indorse the note to her; and in either case, without recourse. The deed of trust would not be released and she would hold and own the note and the security, the deed of trust.

"If she paid, being a real party in interest and in order to protect her interest, she would be entitled to subrogation in a court of equity; but

she wants to have the note either assigned or indorsed over to her, and without recourse.

"I want an opinion if the county has any right to assign, transfer, negotiate, indorse this property of the county, to the widow? I cannot find any statute or law that permits the county to sell any of its contracts, or notes, or bonds, and then pass title to the same by an assignment or some kind of an indorsement."

Article VI, Section 36, of the Missouri Constitution, at page 121c, reads 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 prescribed by law."

County courts, as such, have limited jurisdiction and being creatures of statutory origin have no common law or equitable jurisdiction. Because of their statutory origin, these courts have only the authority to do what is permitted by statutes. *St. Louis v. Menke*, 95 S. W. (2d) 813; *State ex rel. v. Johnson*, 138 Mo. App. 306, l. c. 314.

Further supporting the proposition that county courts are not general agents of the counties of the State, but are courts with limited jurisdiction and that any acts outside of their statutory authority are null and void, are the decisions of *Boyles v. Gibbs*, 158 S. W. 590, 251 Mo. 492; *Sturgen v. Hampton*, 88 Mo. 203; *King v. Maries County*, 249 S. W. 418, 297 Mo. 488 and *State ex rel. v. Clinton County Court*, 185 S. W. 1149, 193 Mo. App. 573. The case of *Saline County etc., v. Thorp, etc., et al.*, 337 Mo. 1140, tends to uphold this proposition.

We have been unable to find any statute or authority which would permit the county court to sell, discount or assign notes or bonds in the manner set forth in your request. In the

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absence of such specific authority, the county court would not have the power to do this.

The above and foregoing constitutes the opinion of this Department.

Respectfully submitted,

RALPH C. LASHLY  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

RCL:EG