

COUNTY COURTS: Authority to appoint agent under Sec. 17766, R. S. Mo. 1939, and to provide compensation for discharge of duties under such appointment.

February 26, 1945

FILED

Honorable G. R. Breidenstein  
Prosecuting Attorney  
Kahoka, Missouri

Dear Sir:

Reference is made to your letter under date of February 17, 1945, requesting an opinion of this office upon the following facts:

"On February 5, 1945, the County Court of Clark County, Missouri, made and entered of record the following order.

"The Court having taken Judicial Notice of the Act of Congress, being an Act to amend and supplement the Federal-Aid Road Act approved July 11, 1916, approved December 20, 1944 and to be cited as the "Federal-Aid Highway Act, finding that it is advisable and to the best interests of Clark County to have an authorized agent to represent Clark County, in co-operating with State officials, and local governmental agencies under the supervision of the Public Roads Administration to the end that Clark County may properly present its claims to the benefits of said Act, hereby appoint Jesse L. England, as Agent for Clark County, Missouri under the provisions of Section 13766, Revised Statutes of Missouri, 1939, or Amendments thereto, for the aforesaid purposes, said Jesse L. England, to serve as such agent at the pleasure of the Court, and to be paid therefor the sum of \$100.00 per month for which vouchers therefor are ordered to issue and for such

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reasonable expenses as may be incurred by him in the performance of his capacity of Agent for Clark County while absent from Kahoka, Missouri.'

"This order was made without my knowledge. In fact its existence came to my attention only yesterday. I was not consulted by the court in regard to the legality of the order. I have read section 13766 referred to in the order and after considerable deliberation I cannot see wherein that section authorizes any such order or appointment on the part of a county court. I do not know of any buildings the court contemplates erecting or any contracts to be let. In fact the reading of the order does not refer to the things mentioned in this section of the statute but rather refers to some work which the Agent is supposed to do to see that this county gets some benefits from the Federal-Aid Highway Act.

"I want to ask your opinion if the county court can make such an order and appointment and expend county funds for that purpose. If so from what money or funds should this be paid? There was no allowance made for this in the official budget."

The appointment of the agent described in your letter was made under the authority of Section 13766, R. S. Mo. 1939, reading as follows:

"The county court may, by an order entered of record, appoint an agent to make any contract on behalf of such county for erecting any county buildings, or for any other purpose authorized by law; and the contract of such agent, duly executed on behalf of such county, shall bind such county if pursuant to law and such order of court."

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It is apparent that under the plain terms of the statute quoted the county court is authorized to delegate authority to an agent to execute a contract on behalf of the county. This delegation of authority does not, of course, permit such agent to determine the terms of such proposed contract, as this duty is imposed upon the county court in the discharge of its duties as general fiscal agent for the county. We, therefore, are of the opinion that such agent can merely discharge ministerial duties relating to the formal execution of a proposed contract.

The order made by the county court in the present instance does not by its terms come within the purview of Section 13766, R. S. Mo. 1939, as it in effect is a contract by Clark County with a person designated as agent to perform certain duties on behalf of Clark County, and is not the appointment of an agent to enter into a contract with some third party on behalf of Clark County, such as is contemplated by the statute mentioned.

The question then presents itself of whether a contract made by the county court with a person to enter into negotiations looking to the receipt of federal aid for highway construction is authorized. Employment contracts of this type are controlled by the decision rendered by the Missouri Supreme Court in the case of *Blades et al. v. Hawkins et al.*, 240 Mo. 187, from which we quote, in part:

"The more important proposition, and the one chiefly controverted, is as to the power of the county court to employ an expert accountant to audit the public records and the accounts of present and prior officials. Its power to do so must be found in some express statutory grant, or else implied as essential to the proper execution of powers expressly granted or duties expressly imposed. Section 6759, Revised Statutes 1899, (now Section 3349, R. S. Mo. 1939) prohibits counties and other municipal bodies from making any contracts not within the scope of the powers of the municipality or expressly authorized by law. This provision is but declaratory of the common law; for these public corporations never have been deemed

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to possess authority to contract, or do any other act, unless the power was granted by statute or could be implied because necessary and incidental to the due performance of powers granted or duties enjoined. This doctrine applies to county courts and commissioners, as well as to the governing bodies of other subordinate political corporations. (Wolcott v. Lawrence Co., 26 Mo. 277; Sturgeon v. Hampton, 88 Mo. 204.) There is in our statutes no grant of authority to a county court to employ an expert to audit and examine the books and accounts of the county and its officers. Hence, if this authority existed in the present instance, it was because the law implied it as essential to the due exercise of powers specifically vested in the county court by statute or the performance of a duty specifically required of said tribunals. The courts are conservative in implying powers not expressly given. One limitation imposed by law on these implications is that no power will be implied to belong to a public corporation unless it is cognate to the purpose for which the corporation was created."

In the case cited payment for the services rendered was upheld on the ground that since the duty to audit the accounts of the county officers was imposed upon the county court, the implied power was vested in the court to employ such agents as were necessary to make the required examination.

The contract under consideration relates to matters affecting public highways and the possibility of securing federal aid for their construction and maintenance. Duties in regard to these matters have not been imposed upon the county courts by statute and are not, in our opinion, reasonably implied because necessary and incidental to the due performance of powers granted or duties enjoined. This is particularly true in view of the statutory and constitutional provisions establishing the state highway commission and the county highway commission, evidencing an intention on the

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part of the legislature that these bodies represent the counties in such road matters. The Federal Aid Act, referred to in the order of the County Court of Clark County, also provides that the respective state highway commissions shall represent their states in determining the amount of federal aid to be granted them.

CONCLUSION

In the premises, we are of the opinion that the order referred to in your inquiry is not one which the County Court of Clark County was authorized to enter into under Section 13766, R. S. Mo. 1939, as the duties delegated to the person employed thereunder are not duties imposed upon the county court by statute, nor are they such duties as may be reasonably implied because necessary and incidental to the due performance of powers granted.

Respectfully submitted

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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HARRY H. KAY  
(Acting) Attorney General

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