

COUNTY: Re: The authorization of the County Court of Maries County to
COURTS: contribute funds of the County for the erection of a mem-
orial building under Article II, Chapter 138, R. S. Mo. 1939.

October 18, 1945



Honorable W. H. Holmes, Representative
63rd General Assembly
State House
Jefferson City, Missouri

Dear Mr. Holmes:

We acknowledge receipt of your letter of October 3, 1945, in which you request an opinion of this office as follows:

"The present General Assembly of Missouri recently appropriated \$1,000.00 for Maries County under Art. 2, Chapter 138, R. S. of Mo. 1939, to be used in the construction of a Soldier's Memorial.

"Can the County Court of Maries County contribute such funds as they see fit and proper from the funds of said County, to aid in the construction of this memorial?"

You very kindly indicated to us that the General Assembly of Missouri recently approved \$1,000.00 for Maries County under Article II, Chapter 138, R. S. Mo. 1939, to be used in the construction of a soldier's memorial. The complete Article II of Chapter 138, R. S. Mo. 1939, to which you refer, is set out below.

Section 15444, R. S. Mo. 1939, reads as follows:

"In appreciation of the services rendered by the citizen soldiery of Missouri in the war against Germany and her allies and for the purpose of preserving the records and perpetuating the memory of their heroic achievements, a memorial building, monument or other suitable testimonial shall be erected or placed in each of the counties of the state and in cities not part of a county. Such memorial may be a building or a monument or in the form of tablets suitably inscribed and placed in some building at the county seat of such counties or at such places designated by the county

courts of said county and in said cities not part of a county. The exact nature of such memorial shall be determined by the county court of the county or by the municipal assembly of said city."

Section 15445, R. S. Mo. 1939, reads as follows:

"For the purpose of carrying out the provisions of this article the county courts of the several counties and the municipal assemblies of the said cities are authorized to erect said buildings, monuments or tablets and to do all things necessary to carry out the provisions of this article. Such county courts and municipal assemblies are hereby authorized to appropriate funds for such purpose and to receive, manage and expend funds donated for such purpose and to make all contracts and purchases, including the acquiring of real estate, necessary in the premises. It shall be the duty of the county courts of the several counties and of the municipal assemblies of said cities, under the supervision and with the assistance of the adjutant general and in the form to be prescribed by him, to collect and file in such memorial building, or in the office of the county clerk of such county or other suitable place designated by the county court, or in such place as may be designated by the municipal assemblies of said cities, a record of the soldiers, sailors and marines who, as citizens of said county or city, served in the war against Germany and her allies and it shall be the duty of said county clerk and of the custodian designated by the municipal assembly of said city to safely keep and preserve such records properly indexed for ready reference thereto."

Section 15446, R. S. Mo. 1939, reads as follows:

"When the county court of any county or the mayor of said city shall certify to the governor that it has appropriated or raised the

sum of not less than two hundred and fifty dollars (\$250.00) for the purpose of carrying out the provisions of this article, a like sum, not to exceed the sum of one thousand dollars (\$1,000.00) shall be allotted said county or city for such purpose from the appropriation hereinafter made."

It will be noticed that Section 15444, supra, provides that a memorial to the citizen soldiery of Missouri in the "War against Germany and her allies," shall be erected in each of the counties of the state. Section 15445, supra, provides that the county courts of the several counties are authorized to erect such buildings or other memorials "and to do all things necessary to carry out the provisions of this article." Some of the actions necessary for this purpose are enumerated in Section 15445, supra. Among these are the appropriation of funds for such purposes and the selection of the nature of such memorial. These sections were passed in 1919 at the conclusion of World War I. We think the provisions of the statute authorize all necessary action on the part of the county court for the purpose of Article II, Chapter 138, R. S. Mo. 1939.

Section 23 of Article VI of the Constitution of 1945, reads as follows:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

Section 25 of Article VI of the Constitution of 1945, reads as follows:

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 100,000

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inhabitants to provide for the pensioning of other employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

Whether an appropriation by the county court of public money for the purposes of a memorial building would be violative of these sections of the Constitution depends on whether such appropriation would be for a public or private purpose. (Jasper Co. Farm Bureau v. Jasper Co. (1926) 315 Mo. 560, l.c. 564.) There are no Missouri cases which directly decide this question, but it has been held in other states that such public memorials are for a public purpose.

In Slavich v. Hamilton (1927 Calif.) 257 Pac. 60, the county of Alameda proposed to erect a veteran's memorial building for the purpose of stimulating and promoting patriotism and provide meeting places and memorial halls for patriotic associations and their members. The court in that case, l.c. 63, said:

"* * *The building proposed to be erected according to the petitioners, will 'be used primarily as a meeting place and memorial hall for organizations whose membership is composed of soldiers, sailors and marines who have served the United States of America honorably in any of its wars.' While it is well settled that the erection of such a building is for public purposes (Allied Architects' Ass'n v. Payne, supra; Barrow v. Bradley, 190 Ky. 480, 227 S. W. 1016; Kingman v. Brockton, 153 Mass. 255, 26 N. E. 998, 11 L.R.A. 123; Hill v. Roberts 142 Tenn. 215, 217 S. W. 826),* * *"

In Hunter v. City of Louisville, 265 S. W. 277, 204 Ky. 562, the City of Louisville proposed to construct a memorial building to the soldiers and sailors of the last war and the court, l.c. 279, said:

* * *

"We therefore conclude that the expenditure of city funds in construction of the contemplated memorial is for a public purpose, although all of the soldiers and sailors in whose memory it is erected were not res-

idents of the City of Louisville. It follows that the act does not violate either of the constitutional provisions above mentioned."

In *Barrow v. Bradley*, 227 S. W. 1016, 190 Ky. 480, the same proposition arose and the court in that case, l.c. 1017, said:

"(3) But it is so well settled now that the reasonable use of public money for memorial buildings, monuments, and other public ornaments, designed merely to inspire sentiments of patriotism or of respect for the memory of worthy individuals, is for a public purpose that it hardly seems necessary to devote time to a discussion of this branch of the case. *Kingman v. Brockton*, 153 Mass. 255, 26 N.E. 998, 11 L.R.A. 123 and note; 19 R. C. L. 722; *Judson on Taxation*, See. 349."

From the above we think it is clear that an appropriation for a memorial building is an appropriation for a public purpose and does not, therefore, violate the provisions of Sections 23 and 25 of Article VI of the Constitution of 1945.

CONCLUSION

It is, therefore, the opinion of this department that the county court of Maries county may contribute funds of the county in any manner they deem appropriate to aid in the construction of a memorial building in Maries County, subject only to the limitation that they must remain within the terms of Article II, of Chapter 138, R. S. Mo. 1939.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw