

COUNTIES;

County Court cannot make donation to city for municipal airport.

February 18, 1946

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Honorable George M. Davis  
Prosecuting Attorney  
Macon County  
Macon, Missouri

Dear Mr. Davis:

This Department is in receipt of your request for an official opinion which reads as follows:

"Money is being raised for preliminary survey for an airport. The County Court was asked to contribute. It was my opinion that they could not make such contribution. The airport would probably be a municipal airport of the city of Macon, but this is simply a preliminary survey; however, as a matter of public interest the parties wanted me to get your opinion on the matter so I am asking you whether or not the county court can make contributions to a preliminary survey for an airport. It would probably be a municipal undertaking of the city of Macon. This matter seems to be pressing and I would appreciate it, if I could have your very earliest opinion."

The question presented is, whether or not a county may contribute money to a city which is making a preliminary survey preparatory to the building of a municipal airport.

It is presumed from the facts given in your request that Macon County will have no interests or owner-

ship in said airport but that it will be entirely a city undertaking, so that Section 15123, R.S. Mo. 1939, which authorizes counties to own and operate airports, therefore, has no relation to the question at hand.

Section 23, Article VI of the Constitution of Missouri, 1945, provides 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, Article VI of the Constitution of Missouri, 1945, states:

"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 salari-  
ed 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 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."

While there are no cases interpretating these Sections of the Constitution of 1945, however, Sections

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46 and 47 of Article IV of the Constitution of 1875, which Constitution preceded the present one, had identical provisions therein.

Sections 23 and 25, supra, proscribe a county from granting public money to any corporation. As was pointed out in State ex rel. Board of Control vs. City of St. Louis, 216 Mo. 47, the term "corporations" includes both private and public corporations. In that case the Court quoted with approval the case of State of Missouri vs. Curators of State University, 57 Mo. 178, in which it is said, l.c. 93:

"\* \* \* 'It is not pretended that the provision of the Constitution was complied with, but it is urged that the subscription or loan of credit of Phelps county to the University was to a public corporation, and therefore not within the meaning of the constitutional restriction. That the curators of the University constitute a corporation is not denied, but it is said that this provision of the Constitution was directed solely against subscriptions to private corporations. The language of the section makes no discrimination of this sort, nor does the main purpose of the prohibition require any such discrimination. What was the object of restriction on county courts, city and town municipalities? The object was plainly to prevent them from taxing the people without their consent. No loan or credit was allowed to any company, association or corporation without the consent of the people who had to pay it. The business of the company, association or corporation is not referred to in the Constitution. . . . What right, then, has this court to interpolate the word "private" into this section of the Constitution? The corporation to which the bonds in question were issued was in some respects a public corporation, and established for educational purposes--an object always held in high regard by

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the State; but why is this object, however laudable, to overturn a plain provision of the Constitution, or to authorize a taxation which the Constitution forbids.  
\* \* \* "

In State ex rel. Kirkwood vs. County Court of St. Louis County, 142 Mo. 575, the Court had before it the constitutionality of a law which required the County to expend money upon the streets of incorporated cities in which the county had no concern or control. The Court said, l.c. 584:

"\* \* \* In all of their municipal and governmental affairs they (towns and villages) act independently of the counties in which they are located. So with respect to the counties, they have control through their proper officers of the road fund set apart for building and repairing roads. While by the act in question it is made the duty of the proper corporate authorities of cities, towns and villages to expend upon their roads, streets and public highways, the moneys obtained by them from the county court under the provisions of the act, no condition is imposed in the first place to their right to the money. They are entitled to it, if at all, absolutely and unconditionally. When the county taxes are collected and the money is paid in to the county treasury, it becomes public money, and the act of the legislature which authorizes the appropriation of any part of it to be expended upon the roads, streets and public highways of incorporated cities, towns and villages, in which counties have no concern or control, is a gift or grant within the meaning of that provision of the Constitution quoted, to such city, town or village. " (insert ours.)

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Therefore, a constitutional provision against counties making gifts to corporations includes donations by a county to a municipal corporation over which they have no control.

The cases of City of Hannibal vs. Marion County, Missouri, 69 Mo. 571; State ex rel. vs. Taylor, 224 Mo. 393; State ex rel. Clark vs. Gordon, 261 Mo. 631, and Jasper County Farm Bureau vs. Jasper County, Missouri, 315 Mo. 560, 286 S.W. 381, do not announce a contrary doctrine because a reading of these cases all show that such gifts and grants were to an agency or subdivision of the particular entity making the gift.

As pointed out in State ex rel. vs. Taylor, 224 Mo. 393, which case approved a grant by a county to a drainage district, that said drainage district "is not independent of the county, but, upon the other hand, it owes its being to and is subject to the authority and control in the same sense in which townships of a county are subject to its control."

The rule announced herein has been supported in Bassille vs. Ramsey Co. 71 Minn. 198, Dady vs. Lyons 57 N.Y.S. 448 and Russell vs. Tate, 52 Ark. 541.

#### CONCLUSION.

It is, therefore, the opinion of this Department that a County Court may not make a contribution to a city for the purpose of a preliminary survey for a municipal airport.

Respectfully submitted,

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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