

MAGISTRATE COURT: County Court has authority to permit the Magistrate to use the Circuit Court room at such times as it is not in use by the Circuit Court.

January 22, 1947

Honorable Omer H. Avery
Prosecuting Attorney
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Troy, Missouri



Dear Sir:

This will acknowledge receipt of your letter, in which you request an official opinion from this department relative to the County Court's authority to provide room facilities for the Magistrate Court and jury room. Your letter reads as follows:

"The advent of the office of Magistrate presents a problem to the County, due to the lack of space in our Court House. There is no available space for Magistrate Court and jury room, and it is desired to use the Circuit Court room and facilities at such times as it will not conflict with the use thereof by the Circuit Court.

"This matter was discussed by the County Court with Judge Bruere, Circuit Court Judge, and Judge Bruere has forbidden the use of the Circuit Court room for the Magistrate.

"It is my opinion that the County Court has charge and control of the county property, including the Circuit Court room, and authority to permit the Magistrate to use the Circuit Court room at such times as it is not in use by the Circuit Court. However, before bringing the matter to issue with the Circuit Court, an opinion from your office is desired as to whether or not the County Court has a right to control and determine the use of the Circuit Court room at times when the Circuit Court is not in session. This situation now exists in many counties, especially counties with court houses that were built years ago without court room facilities for the Probate Judge."

In a reading of Senate Bill 207, passed by the 63rd General Assembly, dealing with magistrate courts, we find only one reference to the place where a magistrate court is to be held, and that is in Section 18, which provides:

"The county seat shall be the seat of the magistrate court, and the county court may, by proper order, provide an additional place or places in the county for the holding of magistrate court; provided however that in counties of the first class the county court may by proper order establish the seat of any magistrate court at some place within the county other than at the county seat."

There should be, we feel, no question but what it is the duty of county courts to establish and maintain out of the county funds the offices of the magistrate courts in their respective counties.

Section 2480, R.S. Mo. 1939, referring to the county court, provides:

"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."

In the case of Sparks v. Purdy et al., 11 Mo. 220, the Supreme Court of Missouri said at l.c. 224:

"The law intrusts the County Court with the control and management of the property, real and personal of the county; and under this power the court superintends the public buildings. * * * * *

In the case of Penix v. Shaddox, 263 S.W. 389, the Supreme Court of Arkansas said:

"It is the duty of a county to erect and furnish a courthouse, and to provide necessary offices for the several county officers. Law v. Falls, 109 Ark. 395, 159 S.W. 1130.

"Section 2279 of Crawford & Moses' Digest defines the powers generally of the county courts of the state. Among other things, the section provides that the county court of each county shall have the control and management of all the property, real and personal, for the use of the county and to cause to be erected all buildings and all repairs necessary for the use of the county.

"Thus it will be seen that the county court is given, not only the authority to furnish a courthouse, but to provide the necessary offices for the several county officers. This includes the power to designate the rooms which are suitable for each particular office, and the action of the county court in assigning the particular rooms which shall be occupied by the different officers is the act of the county. This power is not exhausted when once exercised; but is a continuing one, and the assignment of offices may be changed whenever, in the judgment of the county court, the public convenience will be promoted by the change."

In the case of the Board of Commissioners of Vigo County v. Stout et al., 136 Ind. 53, the Supreme Court of Indiana, in speaking of the duties of the County Commissioners, which is analogous to the county courts in Missouri, said at l.c. 57:

"The control of county property, and the management of county business generally, is confided by law to the commissioners of the county. In contemplation of law, in so far as the financial affairs of the county are concerned, the board of county commissioners is the county. The construction, maintenance, and custody of all county buildings, not excepting the court house, are in the hands of the board. They provide and care for all the

offices necessary for the conduct of county affairs, including court rooms, offices for the clerk and sheriff of the court, jury rooms, jail and other rooms and buildings convenient and necessary for the conduct of the business of the courts. This, of course, includes the means of access to the court, whether by doors, halls, corridors, stairways, or elevators." (Emphasis ours.)

Thus, from a reading of the above cited cases, we are lead to the conclusion that the county court controls the county property, real and personal; and that it is the duty of the county court to provide the necessary offices for the several county officers. This would, of necessity, include the furnishing by the county court of a room to be used for the magistrate court. Now, can the county court order that the circuit court room be used for this purpose when the circuit court is not in session? The Indiana Court, in the Vigo County case, supra, continued at l.c. 58:

"But while the powers and duties of the board of county commissioners within the county are thus ample and complete, as a constituent part of the administrative department of the State government, yet it must be kept in mind that these powers and duties are entrusted to the board for certain defined purposes, and that the commissioners are trustees for the carrying out of such purposes. The commissioners may not exercise their powers arbitrarily and without regard to the trusts committed to their keeping."

The case of *In re Court Room*, 148 Wis. 109, involved the question of whether the County Board, (which is the same as the county court in Missouri), had complied with a statute which required that it provide suitable and convenient quarters for the accommodation of the circuit court. The circuit judge, Judge Turner, contended that the county court had not so provided. The Supreme Court of Wisconsin said at l.c. 121:

"* * * The authorities, in so far as any can be found on the subject, are to the effect that a constitutional court of general jurisdiction has inherent power to protect itself against any action that

would unreasonably curtail its powers or materially impair its efficiency. A county board has no power to even attempt to impede the functions of such a court, and no such power could be conferred upon it. Circuit courts have the incidental power necessary to preserve the full and free exercise of their judicial functions, * * * * *

(Emphasis ours.)

In the Wisconsin case, supra, the court decided, from the record, that the quarters which the county board proposed to furnish were inadequate, and that the circuit judge was within his rights in refusing to occupy them. The Court, in so holding, said at l.c. 122:

"* * * Judge TURNER acted within his right in deciding primarily that the quarters which the County Board proposed to furnish were inadequate. But the law vests in the county board the power to furnish court rooms, and, so long as those furnished are reasonably adequate, courts cannot insist that different quarters be provided, although they may be more commodious or pleasant or even more convenient. * * * * "

Thus it would seem to be only fair and reasonable that, since, as we have seen, it is the duty of the county to provide offices for its officers; and, since by the bill establishing and setting up the magistrate courts there is no specific provision for their court rooms, it is the County Court's duty to provide adequate facilities for the Magistrate Court. Such adequate facilities would seem to include such a room as the Circuit Court room. The county controls the county property, including the Courthouse in which the Circuit Court room is located. If the use of the Circuit Court room, in order to provide adequate quarters for the Magistrate Court is reasonable and necessary, and such as not to unreasonably curtail the powers or materially impair the efficiency of the Circuit Court, then it is within the power of the County Court to order such use of the Circuit Court room for use by the Magistrate Court when the Circuit Court room is not otherwise in use.

CONCLUSION

It is, therefore, the opinion of this department that, if

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there is no adequate space available in the Courthouse for the Magistrate Court and jury room except the Circuit Court room, then the County Court has authority to permit the Magistrate to use the Circuit Court room for the Magistrate Court room, to be used at such times as it is not in use by the Circuit Court.

Respectfully submitted,

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APPROVED:

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