

COUNTY COURTS:) A county court speaks only through its record.
)
) County not bound by oral agreements with county
) judges.

1-22-53

JOHN M. DALTON
XXXXXXXXXXXX

January 22, 1953

Honorable Richard D. Moore
Prosecuting Attorney
Howell County
West Plains, Missouri



John C. Johnsen
XXXXXXXXXX

Dear Sir:

Your request for an opinion of this department has been received. The request is as follows:

"I would like your opinion in regard to the following: In 1950, Paul McGoldrick, who was at the time, treasurer of Howell County, was indicted for embezzlement of State funds. At the same time his brother, Harry McGoldrick, who had been treasurer of Howell County prior to Paul's term, was indicted for embezzlement also.

"The County Court of Howell County instigated an action against the bondsmen of Harry and Paul McGoldrick for the amount the Treasurer's office was short, amounting to approximately \$16,000, I understand. The bondsmen paid this amount of money to the County Court and the Court dismissed the action against them. At the time, the money was paid under protest and the Court made an oral promise to the bondsmen that if the McGoldricks were not subsequently convicted of the charges, they would pay this money back to the bondsmen. The embezzlement charges were subsequently dismissed against the McGoldricks, after several trials had been had, and the State failed to get a conviction.

"The bondsmen are now demanding that the County Court pay them back the sum they paid into the Court in accordance with the Court's oral agreement. The Court, under these circumstances, wants to know if they

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have authority to pay back this money to the bondsmen. I had advised them that under my understanding of the law they do not have this authority and they desired I write the Attorney General and get an opinion from your office."

We assume the records of the County Court of Howell County show that the ex county treasurers, Harry and Paul McGoldrick, were in debt to the county on account of misappropriation of county funds; that suit was ordered filed to recover the deficit, and that Sixteen Thousand (\$16,000) Dollars or approximately that amount was accepted by the court in settlement and disposition of the suit against the bondsmen of said officers.

We first call your attention to Section 432.070, RSMo 1949, which is as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

(Emphasis ours.)

We next call your attention to the case of Arbyrd Compress Co. v. City of Arbyrd, (Mo. App.), 246 S.W. (2d) 104, 109, where the court said:

"The county court is a court of limited jurisdiction and can only exercise such powers as are expressly given it by statute. It had no legal power whatsoever to exercise jurisdiction in matters pertaining to the exclusion of plaintiff's property from the city limits of defendant city and its judgment touching that subject was a nullity."

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In Decker v. Diemer, 229 Mo. 297, 322, Lamm, J., speaking for the Supreme Court In Banc, said:

"So the evidence of Mr. West (delivered on December 3, 1909) to the effect that he was told by the judges of the county court that they had no money to pay his account for services rendered in 1909 is of no probative value. The county court speaks by its record. The talk of a judge outside the record of his court is no evidence of the state of accounts shown by the books. Furthermore, West's services for 1909 were, primarily, chargeable against the revenues of that year."

(Emphasis ours.)

In Boatright v. Saline County, (Mo. Sup.), 169 S.W. (2d) 371, 372, we find the following:

" * * * In the latter case the Court of Appeals said: 'A County Court may speak only through its records, and ex officio, verbal understandings with county judges are not valid and binding.'

"The consent and approval of the county court must be made a matter of record. A county cannot be made liable for sums, as in this case \$3,200, merely upon the oral expressions of the members of the court. * * "

(Emphasis ours.)

From the above-quoted statute and authorities, we are of the opinion that the County of Howell could in no way be held liable for the funds mentioned in your request. A county court may speak only through its records. Verbal agreements made by county judges, not entered of record, are not valid and binding on the county. Your county court has no authority, under the stated facts, to return the funds paid into the county treasury in settlement of the suit against the ex-treasurers' bondsmen.

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CONCLUSION

It is the opinion of this department that the judges of your county court cannot bind the County of Howell by an oral understanding to return to bondsmen money already paid into the county treasury in settlement of the suit filed against said bondsmen. The county court has no authority, on the above state of facts, to return this money to the bondsmen.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Grover C. Huston.

Respectfully submitted,

JOHN M. DALTON
Attorney General

GCH:VLB