

COUNTY COURT: County court of a third class county may not ap-  
TREASURER: point a deputy county treasurer; a county de-  
COUNTY DEPOSITORY: pository may honor checks signed by a de facto  
DE FACTO OFFICERS: deputy to the county treasurer if it has no  
DEPUTIES: knowledge of the invalidity of the appointment  
OFFICERS: of the deputy.



October 4, 1954

Honorable J. Patrick Wheeler  
Prosecuting Attorney  
Lewis County  
Monticello, Missouri

Dear Mr. Wheeler:

In your letter of July 14, 1954, you requested  
an official opinion on the following questions:

"May the County Court of a third class  
county appoint a Deputy County Treasurer?"

"If your answer to the previous question  
is in the negative, then, what is the  
responsibility of a county depository  
who makes payments on checks issued by  
a Deputy county treasurer?"

In a subsequent letter you stated:

"I wish to advise that the checks signed  
by the propertive Deputy County Treasurer  
were signed as follows: 'Lee E. McKim,  
Treasurer, by Erma Dee Martin, Deputy',  
With respect to your question No. 2, you  
are correct in presenting that my inquiry  
relates only to checks honored by the de-  
pository in the past and not to future  
checks. This office gave an opinion to  
the Court after learning of the action  
taken that they had no authority to ap-  
point a Deputy County Treasurer and there-  
after the depository ceased to honor any  
checks. My question is merely in regard  
to the checks honored by the depository  
prior to the time which they were advised

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that the deputy was improperly appointed. Further, I might say, that I have no indication that these checks were issued for anything other than value received by the County, and my interest in determining the checks passed by the depository is to ascertain whether or not they can be passed by an audit. If not then of course some arrangement would have to be made with the depository to have this error corrected."

We note that Lewis County does not have township organization.

An examination of the statutes pertaining to counties of the third class discloses no authority in the county court of third class counties to appoint a deputy county treasurer. County courts possess only limited jurisdiction and outside of the management of county fiscal affairs possess no powers except those conferred by statute. Missouri Electric Power Company, et al. vs. City of Mountain Grove, et al., 352 Mo. 262, 176 S.W. (2d) 612, 615. In State vs. Jackson, 229 Mo. App. 842, 84 S.W. (2d) 988, it was said, l.c. 989:

"\* \* \* Such court is a creature of the Constitution, and its powers are limited by the terms of the various statutes defining its powers. It has no common-law or equitable jurisdiction."

Since there is no statutory authorization for county courts of third class counties to appoint a deputy county treasurer, we must conclude that such courts have no such authority. However, the county treasurer may appoint a deputy to discharge the clerical duties of the office. This power is derived from the common law, which is stated in Small vs. Field, 102 Mo. 104, l.c. 119, as follows:

"\* \* \* But at common law a ministerial officer had authority to appoint a deputy. Com. Dig.--Tit. Officer (D.I); Am. & Eng. Cyclop. of Law--Tit. Deputy, 624. Thus a sheriff, though his patent of office does not say he may execute his office per se vel sufficientem deputatum suum, yet he may make a deputy. 7 Bac. Ab.--Tit. Offices & Officers, 316 (L).

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"The office of clerk of a court seems to be one which, from its nature and constitution, implies a power or right to execute it by deputy. Whenever nothing is required but superintendency in office a ministerial officer may make a deputy. 7 Bac. Abr. 316, 317, --Tit. Offices and Officers. And the rule is general that a deputy may do every act which his principal might do. Com. Dig. Officers, D. 3; Confiscation Cases, 20 Wall. 92."

Therefore, if the treasurer made the appointment of the deputy the checks signed by the deputy in the manner set out above would be valid. If the appointment was not made by the treasurer, nevertheless, the person was a deputy de facto, and thus her acts were valid as to third persons without knowledge of the invalidity of her appointment. A de facto officer is one who has the reputation of being the officer he assumes to be, but is not a good officer in point of law. 67 C.J.S., paragraph 135, page 438.

The Supreme Court of Missouri in *State ex rel. vs. Perkins*, 139 Mo. 106, 1 c. 116, 117, 40 S.W. 65, discussed this doctrine as follows:

"The foundation stone of this whole doctrine of a de facto officer, as gathered from all the authorities, seems to be that of preventing the public or third persons from being deceived to their hurt by relying in good faith upon the genuineness and validity of acts done by a pseudo-officer. However much color of authority may clothe the person who assumes to perform the functions of an office and discharge its duties, yet, if the public or third persons are not deceived thereby, if they know the true state of the case, the reason which gives origin or existence to the rule, which validates the act of an officer de facto, ceases; and with it cease also all of its ordinary validating incidents and consequences."

Therefore, if the depository believed in good faith that the person signing the checks was, in fact, a deputy

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of the county treasurer as she was held out to be, it was justified in honoring said checks.

#### CONCLUSION

In the premises, it is the opinion of this office that the county court of a third class county may not appoint a deputy county treasurer; and that a county depository may honor checks signed by a de facto deputy to the county treasurer, if it has no knowledge of the invalidity of the appointment of the deputy.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON  
Attorney General

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