

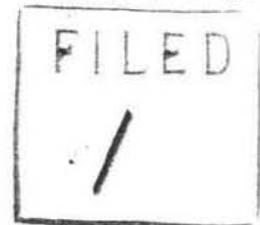
HOSPITAL.  
COUNTY HOSPITALS:  
PROSECUTING ATTORNEYS:  
ATTORNEYS:  
COUNTIES:

It is the duty of the prosecuting attorney to advise the county court and the Board of Trustees of a county hospital concerning all legal matters involving the hospital. It is the duty of the prosecuting attorney to collect delinquent bills owed such hospital. The county court may authorize the prosecuting attorney to employ associate counsel if suits are instituted for the collection of such accounts outside the county in which the hospital is located or outside the State of Missouri.

June 24, 1964

Opinion No. 1 (1964)  
Opinion No. 464 (1962)

Honorable Frank Conley  
Prosecuting Attorney  
County of Boone  
Columbia, Missouri



Dear Mr. Conley:

This is in answer to your request for an opinion of this office as to the authority of the Boone County Hospital to employ a private attorney to perform certain legal services for the hospital.

Your question is whether either the Board of Trustees of the hospital or the county court may employ an attorney on a time and expense basis or on a contingent fee basis to collect delinquent accounts owed the hospital:

- a. Where the defendant resides in the County of Boone.
- b. Where the defendant resides outside the County of Boone.
- c. Where the defendant resides outside the State of Missouri.

You also ask whether the Board of Trustees or county court may employ an attorney other than the prosecuting attorney to give legal advice and assistance in matters other than the collection of accounts including but not limited to such matters as:

- a. Preparation and advice as to contracts.
- b. Preparation and advice with respect to notes, deeds of trust, chattels, examination of abstracts of title and other instruments.
- c. Preparation of other legal documents.
- d. Defense of or the filing of suits involving the affairs of the Boone County Hospital.

Enclosed herewith is a copy of an opinion of this office rendered on March 5, 1953, to the Honorable Curt M. Vogel, Prosecuting Attorney for Perry County. In this opinion, we stated that absent an enabling statute, neither the Board of Trustees of a county hospital subject to Sections 205.160 to 205.340, RSMo 1949, nor the county court in counties in which such hospitals are located is authorized to employ a private attorney for the performance of services which the prosecuting attorney is required by law to perform.

In this opinion, we examined the duties of the prosecuting attorney required by Section 56.060 and 56.070, RSMo 1949, and held that such duties included the collection of delinquent accounts for a county hospital and advising the Board of Trustees of the hospital on all legal matters connected therewith. We therefore concluded that neither the Board of Trustees of a county hospital subject to Sections 205.160 to 205.340, RSMo 1949, nor the county court in counties in which such hospitals are located may employ a private attorney to advise the trustees on legal matters affecting the county hospitals or to collect delinquent accounts owed the hospital by persons residing within the jurisdiction of the prosecuting attorney of the county in which the hospital is located, but must rely on the prosecuting attorney to render such legal services to the hospital without fee. While the 1959 revision of the statutes reworded Section 56.060 and 56.070, no change in meaning was intended or effected.

However, the answer to points (b) and (c) of your first question depends upon the duty of a prosecuting attorney to file civil actions against persons residing outside the county or outside the state. The general rule is that in the absence of statutes extending the territorial jurisdiction of prosecuting attorneys, their powers and duties are ordinarily confined to their respective counties or districts. 27 C.J.S., District and Prosecuting Attorneys, Section 12(4), page 660; 14 Am. Jur., Counties, Section 31, page 203.

The duties of the prosecuting attorney in this state are set out in Sections 50.060 and 50.070, RSMo 1959. Section 50.060 requires the prosecuting attorney to "\* \* \* commence and prosecute all civil and criminal actions in his county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. In all cases, civil or criminal in which changes of venue are granted, he shall follow and prosecute or defend, as the case may be, all the causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses."

Section 56.070 states, among other things, that the prosecuting attorney shall represent generally the county in all matters of law. Our study of the long history of these sections pertaining to duties of prosecuting attorneys reinforces our construction of the meaning of these statutes.

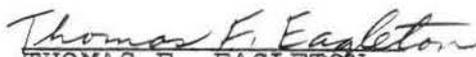
It is our opinion that the territorial restrictions of the first clause in Section 56.060 are broadened by the provisions of the second and third clauses which do not contain the words "in his county". The third clause provides that "each prosecuting attorney shall \* \* \* prosecute \* \* \* actions for the recovery of debts \* \* \* accruing to the state or county." This clause contains no restriction on the area in which the prosecuting attorney may act to recover debts accruing to the county. A debt owed to the county hospital would be considered a debt owed to the county. An action to recover a debt is transitory and jurisdiction lies wherever the debtor may be found. The prosecuting attorney is the attorney for the county, Section 56.070, and we believe Section 56.060 requires him to prosecute the debtor wherever jurisdiction will lie. Since he may prosecute cases outside his county, there is no reason why he may not prosecute cases outside the state. Therefore, it is our opinion that it is the duty of the Prosecuting Attorney of Boone County to prosecute suits to recover delinquent accounts owed the Boone County Hospital by persons residing outside Boone County or outside the State of Missouri. Of course, we know as a practical fact that in suits prosecuted outside the state and sometimes outside the county associate counsel is needed and sometimes mandatory. In such situations the prosecuting attorney should secure the authority of the county court to employ such associate counsel.

#### CONCLUSION

It is the duty of the prosecuting attorney to advise the county court and the Board of Trustees of a county hospital concerning all legal matters involving the hospital. It is the duty of the prosecuting attorney to collect delinquent bills owed such hospital. The county court may authorize the prosecuting attorney to employ associate counsel if suits are instituted for the collection of such accounts outside the county in which the hospital is located or outside the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,

  
THOMAS F. EAGLETON  
Attorney General