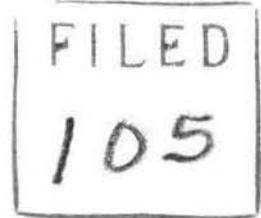


COUNTY CLERK: (1) County engineer of a third class county is not
COUNTY COURT: authorized to purchase material and incur expenses
COUNTY HIGHWAY on behalf of county in absence of order of record
ENGINEER: by county court; (2) New county highway engineer
COUNTY WARRANTS: has no authority to approve unauthorized expenditures
HIGHWAY ENGINEER: incurred by former county highway engineer and the
PRESIDING JUDGE: county court may not ratify and pay such bills;
PURCHASES: (3) Presiding judge of the county court is not
WARRANTS: required to sign warrants for expenses incurred by
unauthorized county officer; (4) County warrant not
signed by presiding judge of county court cannot be lawfully issued;
(5) Without order of record, county clerk may not issue and presiding
judge is not authorized to sign county warrant.

Opinion No. 105

October 14, 1964



Honorable Rolin T. Boulware
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Mr. Boulware:

Your recent request for an opinion of this office involves questions concerning the County Highway Engineer and the County Court of Shelby County. Shelby County is a county of the third class. From the information you gave this office in your letter and in a subsequent telephone conversation, the situation appears to be as set out in the following paragraphs.

The then Shelby County Highway Engineer prior to December 31, 1963, incurred certain expenses totalling \$740.19 for county highway purposes which were charged to the county. The purchases were for motor fuel, minor repairs on equipment and smaller items of expense. In the past the county court had paid such similar expenses without an order of record authorizing the county highway engineer to incur such expenses.

The County Court has now refused to pay the expenses incurred and also refused to pay similar expenses for 1964 totalling \$768.13 incurred by the present County Highway Engineer appointed on January 1, 1964. The former County Highway Engineer has refused to approve the bills by signing them. The new County Highway Engineer approved both the bills he incurred and the former engineer's bills by signing them.

The County Road Fund was then and is now sufficient to pay for these expenses. However, the Presiding Judge of the County Court has refused to sign the county warrants to pay the bills as he believes the expenses were not properly authorized.

Coming to your first question, you ask:

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"Does the County Highway Engineer have authority, in the absence of a County Court order made of record, to purchase materials and incur expenses and charge same to the County Court, assuming, of course, that the materials he orders are for legitimate county purposes?"

While the highway engineer of a third class county under Section 61.220 RSMo is authorized to supervise expenditures of county and district funds by county road overseers and the county court must have the engineer's approval before it pays such expenditures, such statute does not authorize the county highway engineer to make such expenditures himself. Nor can we find any other statutory authority for a county highway engineer of a third class county to make expenditures for motor fuel, minor repairs on equipment or other small items of expense. See also enclosed opinion to Honorable John E. Brooks, under date of June 10, 1947.

We note that the county court did not authorize the highway engineer to make these purchases by an order of record. Assuming it might be held that there was implied authority in the engineer to make such purchases based on the prior actions of the county court in paying for similar purchases by the engineer in the past such course of conduct does not obligate the county. A county court speaks only through its record. For the engineer to have authority to bind the county, it is necessary that there be an order of record authorizing him to make such purchases. *Missouri-Kansas Chemical Co. v. Christian County*, 352 Mo. 1087, 180 SW2d 735; *Boatright v. Saline County*, 350 Mo. 945, 169 SW2d 371; *State v. Miller*, Mo. App., 297 SW2d 611. See also Section 431.090 RSMo, which provides as follows:

"The county court may, by an order entered of record, appoint an agent to make any contract on behalf of such county for erecting any county buildings, or for any other purpose authorized by law; and the contract of such agent, duly executed on behalf of such county, shall bind such county if pursuant to law and such order of court."

Therefore, the answer to your first question is that the county highway engineer of a third class county is not authorized to purchase materials and incur expenses on behalf of the county in the absence of a county court order of record.

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Your second question reads as follows:

"Does the new County Highway Engineer have authority to approve bills incurred by the old Highway Engineer, and if not what can be done by the Court concerning the unapproved bills presented for payment incurred in December, 1963, when the old County Engineer was in office?"

In view of the fact that the former county highway engineer had no authority to make the expenditures for the county, approval of the bills either by the present highway engineer or the former county highway engineer would have no effect one way or the other on the liability of the county for these claims. Only if the county court has the power to ratify the agreements made by the county highway engineer with the supplier without authority could the county be liable.

This brings us to the question as to what the county court can do concerning the unapproved bills incurred by the former county highway engineer in 1963.

Section 432.070 RSMo provides:

"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."

Section 431.100 RSMo permits quantum meruit recovery against a county on contracts with a county that does not fulfill the requirements as to form as provided by Section 432.070 RSMo.

Inasmuch as the contracts entered into by the county highway engineer for supplies and repairs were unauthorized, the county is not bound. Nor is the county bound in quantum meruit under Section 431.100 RSMo because it is necessary under this statute that the agent be lawfully authorized. *Carter v.*

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Reynolds County, 315 Mo. 1233, 288 SW 48; State v. Miller, Mo. App., 297 SW2d 611; Elkins-Swyers Office Equipment Co. v. Moniteau County, 357 Mo. 448, 209 SW2d 127.

Nor may the county court at this time ratify such unauthorized contracts and pay the claimants. The county court is in a position of public trust with respect to the public funds and it may not expend such funds to satisfy a claim for which the county is not liable. Carter v. Reynolds County, supra; Missouri-Kansas Chemical Co. v. Christian County, supra; State v. Miller, supra; Elkins-Swyers Office Equipment Co. v. Moniteau County, supra.

Therefore, your question as to what the county court may do with regard to such unauthorized bills is answered in the negative in that the county court may not ratify the contracts and pay the bills.

Your third question reads as follows:

"Does the Presiding Judge have to sign county warrants for expenses incurred and charged to the County by the Highway Engineer when no prior authority to incur same has been entered by order of record by the County Court?"

This question is answered by State v. Miller, supra, which held at 297 SW2d 615, that the presiding judge is not required to sign warrants for expenses incurred by an unauthorized officer since his duty to sign was not clear and plain, and mandamus would not lie to compel him to sign.

Your fourth question reads as follows:

"If two of the County Judges vote to pay County bills so presented and the Presiding Judge votes against payment and thereafter the Presiding Judge refuses to sign the warrants, can the remaining two County Judges voting for payment, issue and sign the county warrants?"

Section 50.190 RSMo clearly directs that warrants "shall be signed by the president of the court". There is no statutory provision for signatures by other judges of the court if the president refuses. It was held in Steffen v. Long, 165 Mo. App. 254, 147 SW 191, that a warrant without the signature of the presiding judge cannot be lawfully issued.

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Therefore, it is our opinion that a county warrant signed by the county judges other than the president cannot be lawfully issued.

Your fifth question reads as follows:

"Do the Presiding Judge and the County Clerk have a right to issue and sign a warrant where the minutes of the County Clerk do not show any order by the County Court authorizing the payment of the bill?"

It is necessary for the issuance of a warrant by the clerk to be based on an order by the county court under Section 50.180 RSMo and as pointed out previously in this opinion, a county court acts only through its record. Therefore, in order for the clerk to issue a warrant for the presiding judge to sign, it is necessary that the record of the county court show that the county court authorized the payment of the bill by an order made of record.

Conclusion

Therefore, it is the opinion of this office that: (1) The county engineer of a third class county is not authorized to purchase material and incur expenses on behalf of the county in the absence of an order of record by the county court; (2) A new county highway engineer has no authority to approve unauthorized expenditures incurred by a former county highway engineer and the county court may not ratify and pay such bills; (3) The presiding judge of the county court is not required to sign warrants for expenses incurred by an unauthorized county officer; (4) A county warrant not signed by the presiding judge of the county court cannot be lawfully issued; (5) Without an order of record, the county clerk may not issue and the presiding judge is not authorized to sign a county warrant.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jeremiah D. Finnegan.

Yours very truly,


THOMAS F. EAGLETON
Attorney General

Enclosure