

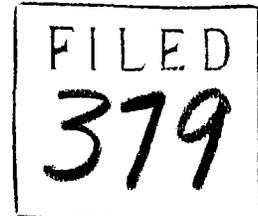
COUNTIES:
COUNTY COURTHOUSE:
MUNICIPALITIES:

(1) The county courts have no power or authority to provide offices in the courthouse for members of the state legislature, and (2) Cities incorporated under statutes of this state have no power or authority to provide offices for the members of the state legislature.

November 9, 1967

OPINION NO. 379

Honorable George W. Parker
State Representative
District 120, Boone County
507 E. Rollins
Columbia, Missouri 65201



Dear Representative Parker:

This is in reply to your request for an opinion on the question whether members of the legislature may be provided office space in the county courthouse. You also ask whether the same answer would apply to city local government.

Your first question is addressed to the power of the county court, for if the county can act at all in this matter, it must do so through the county court. The county court has only limited powers. See Dumm v. Cole County, 315 Mo. 568, 287 S.W. 445; King v. Maries County, 297 Mo. 488, 249 S.W. 418. In the latter case, the Supreme Court of Missouri said:

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. * * * This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted."

Again, in Butler v. Sullivan County, 18 S. W. 1142, the court stated:

Honorable George W. Parker

"* * * If the county court had such power it must be because some statute conferred it; for we have repeatedly ruled that such courts are not the general agents of the counties or the state, and only have such authority as is expressly granted them by statute; beyond the limits of such grant their acts are void. * * *"

Section 49.305, RSMo 1959, provides in part as follows:

"The county court of any county may acquire by purchase, for the county, improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary; or when the county owns the site may acquire by purchase improved or unimproved real estate as an addition to or enlargement of the site * * *".

Section 49.510, RSMo 1959, provides as follows:

"It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct."

Section 49.270, RSMo 1959, provides in part as follows:

"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; * * *"

Honorable George W. Parker

None of the foregoing statutory provisions contain any express authority to the county court to provide the members of the legislature the use of offices in the courthouse. Section 49.270, which grants authority to the county court to lease property, limits such authority to a lease which is made "for the use and benefit of the county" and in any event the authority so granted must come within the scope of the specific powers provided for in the statute.

Absent express authority conferred by statute, there is no power to provide members of the legislature with offices in the courthouse unless such power could be implied from the powers expressly granted. The law, as to implication of power, is stated in Everett v. County of Clinton, 282 S. W. 2d 30, l.c. 37, as follows:

"* * *If such power exists, it must be looked for among those powers which can be implied only as being essential to effectuate the purpose manifested in an express power or duty, conferred, or imposed upon the county by statute. If such a power exists, it must be one related to the subject with which the county has authority to deal in discharging a duty imposed by law. * * * "

This principle was stated in Blades v. Hawkins, 133 Mo. App. 328, 112 S. W. 979, l.c. 981, as follows:

"* * *Hence, if this authority existed in the present instance, it was because the law implied it as essential to the due exercise of powers specifically vested in the courts by statute or the performance of a duty specifically required of said tribunals. The courts are conservative in implying powers not expressly given. One limitation imposed by law on these implications is that no power will be implied to belong to a public corporation unless it is cognate to the purpose for which the corporation was created. * * * "

In the cases in which the county court was held to have implied power it clearly appeared that such power was essential to the proper exercise of the express power granted or was necessary to be inferred from the granting of such power. Thus, in Walker v. Linn County, 72 Mo. 650, it was held that the

Honorable George W. Parker

county court, which had the control and management of the county property and the power to alter, repair, or build county buildings, had the duty to take such measures as should be deemed necessary to preserve all buildings and property of the county and that duty carried with it the power to enter into a contract to insure the buildings.

In Ewing v. Vernon County, 216 Mo. 681, 116 S.W. 518, the court held that the county court was required to furnish necessary janitorial services for the office of the county recorder, such services being in the furtherance of the public interest. In Shiedley v. Lynch, 95 Mo. 487, 8 S. W. 434, the court held that the power to erect a courthouse included the power to buy land for a courthouse site. And in State ex rel Wahl v. Speer, 284 Mo. 45, 223 S.W. 655, 1.c. 660, the court held that the statute which empowered a county to incur a debt to build a courthouse impliedly granted power to expend part of the money in the purchase of additional ground for a site, ground to enlarge the old site and render it suitable for the proposed building.

In all of the foregoing and numerous other cases the court makes clear that the power which is implied is within the scope of the express powers or essential for the purpose of carrying out such express powers.

Your question then, is whether it may reasonably be held to be for the "use and benefit of the county" in carrying out the powers expressly granted, for the county court to provide offices in the courthouse for the exclusive benefit of members of the legislature who choose to utilize these facilities as a place where constituents could have easy access to the legislators.

Although legislators may be elected from a single county or subdivision thereof, their official rank arises from the fact that the legislature is, under our constitution, a coordinate branch of the state government. Certainly their duties concern the state at large, for the legislature is an instrumentality appointed by the state to exercise a part of its sovereign power. In this connection, Section 23.110 RSMo 1959, authorizes offices to be reserved on the third and fourth floors of the State Capitol Building for exclusive use of the members of the House of Representatives.

Honorable George W. Parker

If the county could be held to have the power to provide offices in the courthouse for members of the legislature it should follow that the county could rent space in a private building for the use of these officials, or could provide funds for the purpose of paying charges incurred by the officials for the maintenance of their own offices. This would seem to be particularly true if no office space is available in the courthouse. We do not believe that the county court has such power.

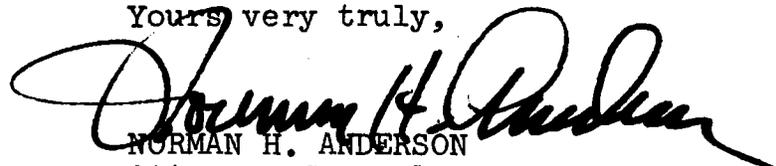
Essentially, the same reasoning would apply to city level government referred to in your second question. The courts have held that a municipal corporation is a creature of the state and can exercise only such powers as has been specifically conferred on it by charter or general law, and either in express terms or by reasonable implication. There is no statute which expressly confers these powers on the governing body of cities generally. The charters of the cities having constitutional charters should be examined to determine whether any such authority has purportedly been granted to any of such cities.

CONCLUSION

It is the opinion of this office that (1) the county courts have no power or authority to provide offices in the courthouse for members of the state legislature, and (2) cities incorporated under statutes of this state have no power or authority to provide offices for the members of the state legislature.

This opinion, which I hereby approve, was prepared by my Assistant L. J. Gardner.

Yours very truly,



NORMAN H. ANDERSON
Attorney General