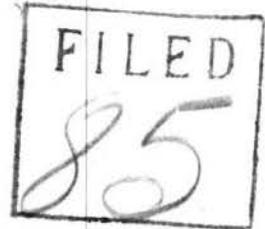


COUNTY COURTS: The right of county courts to compromise
with delinquent officials

October 19, 1939

Honorable Berry Wall Stanley
Prosecuting Attorney
Ray County
Richmond, Missouri



Dear Sir:

We are in receipt of your telegram of
October 18th, requesting an official opinion
as follows:

"Please give me your opinion as
to whether a county court can com-
promise a claim against a county
official for allegedly retaining
fees due the county and whether
such a judgment can be compromised.
Rush special delivery."

Section 12162, R. S. Missouri, 1929, sets
out the general powers of the County Court with
regard to claims to which the County is a party,
and is as follows:

"The county court shall have power
to audit, adjust and settle all ac-
counts to which the county shall be
a party; to order the payment out
of the county treasury of any sum of
money found due by the county on such
accounts; to enforce the collection

of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; and if any person, being served with such summons, shall not appear according to the command thereof, the said court may compel his appearance by attachment; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said court may issue a summons, directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to said court, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with or transmit the accounts, books, documents or papers, or show good cause why he does not, at the time appointed for his appearance, the said court may enforce the delivery thereof by attachment; and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, and may commit to jail any person who shall refuse to answer any lawful question: Provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

In the case of *Blades v. Hawkins*, 240 Mo. 187, we find the following summary of the duties of the court in regard to delinquent officials at page 196:

"The various provisions of the statutes demonstrate that it is not only within the power, but is the duty, of the county court to look after public funds, examine and investigate the accounts of the different officials and other persons, enforce the collection of money due the county, and order suits to be brought on the bonds of delinquents. In short, responsibility for the safety of public moneys, the accuracy and honesty of the accounts and settlements of officials, and the collection of defalcations, is imposed on county courts."

More specific powers of the County Court in regard to the right to settle with all persons chargeable with money belonging to any county are set out in Sections 12153 to 12158, inclusive, R. S. Missouri, 1929. In substance they permit the County Court to enter a judgment against any delinquent officer and to issue execution thereon. The latter section permits the Court to set aside its findings for good cause, and to compromise delinquencies with any officer.

In the case of the *St. Louis Iron Mountain & Southern Railway Company v. Anthony*, 73 Mo. 431, l. c. 434, the question of the power of a County Court to make a compromise was discussed by the Court in the following language:

"It is now contended that the county had no authority to make the compromise in question, or any compromise whatever. We are not of that opinion. The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes were levied for the benefit of the county. The beneficial interest was in the county, and it is for the public interest that she should have the right to settle, by compromise, questionable demands which she may assert. Must the county prosecute doubtful claims at all hazards, regardless of costs and expenses, and is it for the public good that the right to settle such demands by compromise be denied her? As was said by the supreme court of New York in the case of the Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation; it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawal or by agreement with its adversary.' The same doctrine was sanctioned in the Supervisors of Chenango County v. Birdsall, 4 Wend. 453."

The above undoubtedly answers your question in regard to compromise before judgment. The facts in the case show that the county had previously obtained a judgment against the plaintiff but same was set aside on appeal so that at the time of the compromise there was no valid judgment in force. The language of the above quotation seems to indicate that the Court's power to compromise is limited to cases in which the claims are doubtful.

In a Kentucky case, *Shipp v. Rodes*, 293 S. W. 543, and which opinion quotes the Missouri Case just above cited, we find the general rule set out as follows on page 546:

"It is argued by counsel for appellant that the subject-matter of these suits cannot be compromised, but we understand the rule to be well established that pending litigation to recover on claims that are unliquidated and uncertain in amount may be compromised by the state or any of its political subdivisions at any time before final judgment."

Some thirty-five authorities from various jurisdictions, including the Missouri case, are cited.

A search fails to reveal any cases in which the County Court or county fiscal agent has compromised a final judgment. However, in all the cases where the county court has acted in good faith, compromises have been upheld and there is no reason for belief that if a county court compromised a judgment where complete recovery is doubtful that said compromise would not be upheld. *Shipp v. Rodes*, 293 S. W. 1. c. 546, sustains this view in the following language:

"The taxpayer has the right to show, if he can, that the fiscal court did not act in good faith and that it acted in fraud on the rights of the county when it made the compromise agreements, and the question now before us is whether the allegations in his reply constitute any basis for his conclusion that the compromise agreements were fraudulently entered into for the purpose of shielding Rodes and Bradley and assisting them to defraud the county out of what justly belonged to it. We say if these

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things can be shown it follows as a matter of course that the compromise agreements were not entered into in good faith and would have no binding effect and the court should disregard them."

CONCLUSION.

From the foregoing authorities it is our opinion that the County Court may in good faith compromise claims against delinquent officials where there is a dispute as to the amount due, and that it may compromise judgments where complete recovery is doubtful.

Respectfully submitted,

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APPROVED:

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RLH:RV