

COUNTY COURTS: PUBLIC BUILDINGS: County courts may convey a site for construction of a public health center provided such location is not needed for county public buildings.

December 10, 1941

Dr. James E. Stewart  
State Health Commissioner  
The State Board of Health  
Jefferson City, Missouri

12-16



Dear Doctor Stewart:

This is in reply to your letter of recent date in which you request an opinion on the following question:

"May I request an opinion from your office as to the legal status of a County Court's authority to donate a site for the construction of such a health center."

Under Section 2480, R. S. Mo. 1939, county courts have general jurisdiction over the properties of their respective counties. This section is 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; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

However, we think the answer to your question will be controlled by the provisions of Article 2, Chapter 100, R. S. Mo. 1939, pertaining to that situation. Under that chapter, when a county is organized, a county seat is selected for such county. This county seat location must contain not more than 160 acres nor less than 50 acres. (R. S. Mo. 674). Commissioners are selected to transact the business of acquiring such county seat location and their report is finally submitted to the circuit court for approval.

After such tract is finally approved as the county seat location, it is then laid off into lots, squares, avenues, streets, lanes and alleys, as directed by the court. The plat of such plan, after being deposited in the office of the Recorder of Deeds, becomes the official description of such tract and its divisions. Section 13632 of this Chapter provides that the county court shall reserve from sale such lots and squares of ground as it deems necessary for county buildings. In the case of State ex rel. Norman v. Smith, 46 Mo. 60, the court held that the county seat, or seat of jurisdiction, which are synonymous terms, must be within the limits originally selected. At l. c. 64, the court in so holding said:

"\* \* \* The commissioners are then to make report of their proceedings, accompanied by such deeds and abstracts, to the Circuit Court of the county at its next term; and if the court approve the title, it shall cause its decision to be certified to the tribunal transacting county business, and the title of the land so conveyed vests in the county, and the place selected shall be the permanent seat of justice thereof."

It will be noted, however, that this ruling would not prohibit the county court from changing the location of the lands reserved for public buildings so long as the location remained at the county seat or seat of jurisdiction. This rule is further supported by the case of Babcock v. Hahn, 175 Mo. 136, in which case it was held that the recorder's office, so long as it remained within the city of St. Louis, could be removed from its original location.

In our research for an expression by our Missouri courts on this question, we fail to find any case directly at point, however, the case of Van Pelt v. Parry, 218 Mo. 680, the court discussed this question pertaining to the location of county seats and the effect thereof, said at l. c. 698:

"Here, then, was a permanent appropriation and disposition of the land for the purpose of establishing a permanent seat of justice and that visible, actual, palpable appropriation for that important public purpose, coupled with acts in pais in platting the

land into lots and blocks, streets, alleys, lanes, avenues, public squares, etc., and dealing with the property by making sales of lots to build up a county town, made Lamar a permanent seat of justice to all intents and purposes and effectually for all time took the Parry forty out of the salable list of swamp lands as such. It was no longer swamp land but land appropriated for county seat ends -- i. e., county seat land. Barton county having irrevocably devoted it to county seat purposes, could not turn about in after years and trade or sell it as mere swamp land to a purchaser having full notice that it had been devoted to a seat of justice and that such purpose was alive, on foot, and being carried out. Its power to deal with it as swamp land was functus officio, we think. \* \* \* \* \*

In that case, the rule that lands devoted to county seat purposes could not in after years be disregarded or sold by the county as swamp lands was announced. In case the county court sees fit to sell or convey county lands, it may so proceed as directed by Section 13784, which is as follows:

"The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate which the county may then have in or to the premises so conveyed."

In the case of Keatley v. Summers County Court, which was before the Circuit Court of Appeals of West Virginia, 73 S. E. 706, the court, after discussing the authority of the county court in acquiring county seat locations and providing for grounds for courthouse purposes, then went into the question of the quantity of land the county court may reserve or acquire for the courthouse and jail sites. At l. c. 707 the court said:

"The statute does not prescribe the quantity which a county court may so acquire; what tribunal then, is to be the judge of how much is 'requisite or desirable'? The county court, of course. Its discretion in this matter is without limitation, and its judgment thereon is not subject to review. In the very nature of things, and for the certain and convenient administration of the municipal government of the county, it was necessary for the Legislature to vest such discretionary power as relates to the selection of a location and quantity of ground requisite for courthouse purposes in some one person or tribunal; and the Legislature has seen fit to vest it in the county court. \*\*\*\*\*  
The county court is not limited to any definite quantity of land which it may acquire for courthouse purposes, and it therefore necessarily follows that it must be the judge of how much is requisite or desirable. The amount requisite or desirable at one time, and under certain conditions, might not be requisite or desirable at another time and under different conditions. The county court is the sole judge of that question; it acts ministerially in providing a courthouse and grounds for its county, and is vested with legislative discretion in the matter. The authority to acquire so much land is as requisite or desirable for a certain purpose clearly implies the power to dispose of the surplus, if more than is requisite has been acquired. We do not mean to intimate that the county court is authorized, or would be justified under the statute, to enter into land speculations with the public moneys. It could not buy more land than, in its judgment, is requisite or desirable for the public purpose, simply with a view of making a profit by a resale of a portion thereof; but circumstances may easily arise where it is necessary for a county court to acquire more land than it needs for courthouse purposes, in order to secure a good location; and in such event we clearly think it would have the right to do so, and then to dispose of such portion as is not desirable for the public use."

In the case of Collins v. Commissioners of Big Horn County, which was before the Supreme Court of Wyoming, 126 Pac. 465, an action was brought to prohibit the county court from selling, donating or conveying to the United States, real estate which was a part of the courthouse square and which was to be used by the Government for a post office site. From an examination of that case, it will be seen that the powers and duties of the county court with respect to managing and controlling county property are very similar to those in this state. At l. c. 467 the court said:

"\* \* \* \* \* The part of it which it is proposed to convey to the United States for a site for a public building is not used for courthouse purposes, nor does it appear to be necessary therefor; and it is not claimed that the commissioners are acting in bad faith. The law invests the board with the powers of the county as a body politic and corporate, and to its judgment is committed the power to determine the extent of the land necessary and proper for courthouse purposes. To hold that the board cannot sell and convey any part of this 10 acre tract upon which it has erected county buildings would be to hold in effect, that the county having acquired title to it and devoted a part of it to courthouse purposes must forever retain its title and not divert any part of it to other purposes. We do not think such a condition was intended by the Legislature. The quantity of land to be acquired and held by the county for public purposes is not fixed by law; and that matter necessarily must be left to the discretion of some person or board, and in this state that discretion has been vested in the board of county commissioners; and when the board has, in good faith, exercised its discretion, its acts are not reviewable by the courts. A case quite similar to the one before us was recently decided by the Supreme Court of Appeals of West Virginia --Keatley et al. v. Summers County Court et al. 73 S. E. 706. In that case the county court of Summers county was about to sell and convey to the United States a part of its courthouse square in the town of Hinton for the purpose of erecting thereon a

government building. The plaintiffs brought suit on behalf of themselves and all other taxpayers of the county to enjoin the sale. The Chesapeake & Ohio Railway Company, in order to secure the location of the county courthouse in that town, conveyed to the county court a certain square of ground in consideration that within a reasonable time thereafter a courthouse should be erected thereon, and the judicial proceedings of the county should be held upon said premises. By the statutes of that state the county courts were authorized to provide at the county seats of their respective counties a suitable courthouse and jail, and to acquire by purchase or otherwise so much land as might be requisite or desirable for county purposes. It was held that the county court was the judge of the quantity of land that was requisite or desirable, and under the statute possessed the implied power to sell so much of the square as it deemed unnecessary for the public purpose. \* \* \* \* \*

If the county court does not act in good faith in making such a transaction, then such contract may be inquired into under Section 13769. This section reads in part as follows:

"Whenever any fifty resident, solvent and responsible taxpaying citizens of any county in the state shall have good reason to believe, and do believe, that any contract made and entered into by the county court of the county, with any person or corporation, affecting or concerning any public building, lands, moneys or property of the county in any manner whatever, or any extension of any such contract, was not made and entered into in good faith, or for a just consideration, and with due regard for the best interest of the county, or that any such contract previously entered into has not been carried out by the parties thereto in good faith and according to the terms of any such contract, they may bring a suit in the circuit court of any such county

praying that the matter may be inquired into, and thereupon the circuit court shall make a full investigation of the matters alleged, and shall have power to set aside, reform or cause to be enforced any such contract, or any extension of any such contract, as the court shall deem best under the law and the facts.  
\*\*\*\*"

From our research, we think the weight of authorities is that the county court may dispose of land acquired for courthouse purposes, if such court does not deem it necessary to retain the same for county buildings. Of course, the question of good faith is a condition to be taken into consideration in such transactions.

On the question of the county donating lands to the Government for the purpose of erecting public health centers thereon, we will say that this will depend upon the authority granted by statute to the county court to do so. County courts are created by statute and their duties are purely statutory.

It was said in the case of Bayless v. Gibbs, 251 Mo. 492:

"County courts are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void."

Also, in the case of State ex rel. Major v. Patterson, 229 Mo. 373, the court said:

"Under the constitution, Article 6, Section 36, providing that a county court shall have jurisdiction to transact all county business and such other business as may be prescribed by law, county courts are denied any rights except those expressly conferred."

In the case of *Blades v. Hawkins*, 240 Mo. 187, county courts are given incidental powers in the following language:

"While the law is strict in limiting the authority of these courts, it never has been held that they have no authority except what the statutes confer in so many words. The universal doctrine is that certain incidental powers germane to the authority and duties expressly delegated, and indispensable to their performance, may be exercised."

Under our Constitution and statutes, county courts may expend public funds for county public purposes. Such expenditures must not only be for public purposes, but they must also be for county public purposes. We find no statute authorizing county courts to expend county public funds for hospitals owned and operated by the state or federal government, nor do we find any statute authorizing such courts to make donations of money or property for such purpose. In the case of *State ex rel. City of Jefferson v. Smith*, State Auditor, 154 S. W. (2d) 101, the Supreme Court recently held that the City of Jefferson, under its authority to erect municipal buildings and issue bonds therefor, could not do this if the building is not to be used for municipal public purposes. In that case, the building which the city contemplated erecting was to be used as an office building for the Unemployment Compensation Commission.

Also in *Vrooman v. City of St. Louis, et al.*, 88 S. W. (2d) 189, the city, by statute and charter, was authorized to contribute funds to the United States for the erection of a national park. This authority, however, was granted by statute. At l. c. 193 the court said:

"A number of cases are cited from this and other jurisdictions asserting the general rule that taxes levied by a municipality must be for both public and municipal purposes. The rule is clearly and concisely stated in *Cooley on Taxation* (4th Ed.) vol. 1, Sec. 178, page 388, 389, as follows: 'The "public" that is concerned in a legal sense in

any matter of government is the public the particular government has been provided for; and the "public purpose" for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. \* \* \* The purpose must in every instance pertain to the sovereignty with which the tax originates; \* \* \* \* \*"

The court in this case also held that Section 46 of Article 4 of the Constitution did not prohibit such an act by the city.

CONCLUSION

From the foregoing, it is the opinion of this department that a county court, acting in good faith, may convey lands which are part of the lands reserved for county buildings to the Federal Government for a public health center, providing such lands are not needed for such buildings.

We are further of the opinion that the county court would not be authorized to donate such lands for a public health center to the government.

Respectfully submitted,

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APPROVED:

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