

COUNTY COURT: Re: County court has power to sell county land and in the absence of specific statutory direction as to the procedure of the sale, only reasonable precautions must be taken.

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Mr. George Adams
Prosecuting Attorney,
Audrain County
Mexico, Missouri

Dear Mr. Adams:

This will acknowledge receipt of your letter of recent date requesting information of this department, which letter reads as follows:

"Audrain County a number of years ago built a county hospital under Article 4, Chapter 126, Missouri Revised Statutes, 1939, and has since maintained said hospital.

"The hospital, because of its size, has now become inadequate and the board of trustees is contemplating erection of a new hospital at a new location.

"Please advise what disposition can be made of the old building and grounds and what procedure must be followed with reference to the sale of same."

In answer to the inquiries contained in your letter, we will begin with the particular parts of the Constitution and Statutes which authorize the disposition of county property.

Article VI, Section 7 of the new Constitution authorizes the establishment of a county court and directs that said county court shall manage all county business as prescribed by law. Specifically, the section provides as follows:

"In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business

as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provides by law."

In examining the Missouri Revised Statutes of 1939, and subsequent session laws, we find two sections which deal with the disposition of county property. Section 2480, R. S. Mo. 1939, provides 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."

This statute particularly empowers the county court to conduct the sale and conveyance of any real estate which is county property. Section 13784, R. S. Mo. 1939, provides that the county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to the county.

"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 on 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. R. S. 1929, Sec. 12125."

Under the Constitution and the two sections of the statutes previously cited and quoted, supra, provision is made for the disposition of county property either by the county court or by a commissioner appointed by said county court for that purpose.

The authority for a county to establish and maintain a

hospital, such as Audrain County has, is found under Article IV, Chapter 126. After a careful examination of said chapter, we failed to find any provision in said chapter that provides a procedure for the disposition of county property obtained under the authority of this chapter. Further, we have examined the general statutes and failed to find any statutes that set up any general or specific procedure for the disposition of county property. There are some sections which do outline a particular procedure for a county to follow when disposing of particular types of property, for example, the sections on swamp land, Sec. 12754, R. S. Mo. 1939; accreted land, Sec. 12790, R. S. Mo. 1939; school lands, Sec. 12717 and following, R. S. Mo. 1939; and county lots, Sec. 13682, R. S. Mo. 1939. Having failed to find any specific or general statutory authority or direction for the disposition of this particular type of property, namely, a county hospital and grounds, we turn to the general principles of law in order to establish some measures or directions under which a county may proceed in the disposition of their property.

In the case of *Butler County, Missouri, vs. Campbell*, 182 S. W. (2d) 589, l. c. 592, the following statement is made in regard to the conduct of a county court when dealing with county property:

"* * *They (county court) are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs. * * *" (Insert ours)

While we realize that the above quotation lays down no specific procedural steps, it does provide a general basis for the conduct of the county court or the commissioner, should one be appointed, when disposing of county property. In analyzing the statutes cited above, which relate to the disposition of particular types of county property, we find three items that seem to be required as elements of a statutory sale of county property. They are, first, advertising or notice. This may be done either by publication in the county newspaper or by hand bills posted in public places. This advertisement or notice is evidence of the intent of the county to sell such property and apprises the residents of the county of the intention to sell. The length of time that the advertising or notice must be published may vary, but need only comply with the general rule in the *Butler* case quoted supra. Secondly, there should be a full and complete description of the property to be sold. This description should be sufficient to inform those interested in bidding upon said property, of its extent and character, and is usually contained

in the advertising or notice referred to above. Thirdly, the taking of bids. These bids may be either sealed or open. The bids may also be subject to rejection should the bid not approximate the true value of the property. Further, a partial payment may be required of the bidder at the time of submitting his bid. Any reasonable conditions may be imposed upon the bidder. However, we do not mean to infer that it is absolutely necessary that the items listed above are steps to be followed in the sale of the Audrain County property, in order for it to be considered a legal sale. As our research has shown there is no specific or general statutory direction to be followed in the disposition of this property. We are merely suggesting that the items listed above are appropriate steps to be taken by the county court in the disposition of the Audrain County property, and would reflect the reasonable skill and prudence that a county court is charged to use in the disposition of county property under the Butler case, cited supra.

A sale conducted so as to give adequate notice to the residents of the county of the intended disposition of the property, and the taking of such other reasonable precautions as required by the principle of the Butler case, would be sufficient.

CONCLUSION

It is, therefore, the opinion of this department that, first, the county court may sell county land or may, by order, appoint a commissioner to sell same. Second, there is no general or specific statutory authority providing for the disposition of land or buildings acquired by the county under the authority of Article IV, Chapter 126, R. S. Mo. 1939. Third, the sale of county property, in the absence of a specific statute providing for the procedure to be used in such sale, must be conducted with reasonable diligence and prudence.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General
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