

SALE OF COUNTY PROPERTY: A county court has the power and authority to convey real estate belonging to the county. Such conveyance can be made by the court itself without the appointment of a commissioner.

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Honorable J. R. Gideon
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Dear Sir:

This office is in receipt of your recent letter requesting an official opinion upon two matters, the first of which is:

(1). What is the proper method by which a county can convey real property belonging to it?

The second of which is:

(2). Would a deed executed by the county court be sufficient to pass good title, or will a commissioner have to be appointed to make the deed under the order of the court?

In answer to your first inquiry we would call your attention to Section 2480, R. S. Mo. 1939, which states:

"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."

We would also call your attention to the case of *Aslin v. Stoddard County*, 341 Mo. 138, which states:

"The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county."

We would call your further attention to the case of Butler County v. Campbell, 353 Mo. 413, 1.c. 419, which states:

"* * Under the laws of this state, the county court is vested with full power and authority to control and manage the real and personal property of the county and, '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.' Sec. 2480, R. S. 1939. In directing how this power and authority shall be exercised, the statutes provide that 'the county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county.' Sec. 13784, R. S. 1939. It is apparent that 'county courts are by law constituted the guardians of the property and interest of their respective counties. "They occupy a position of trust" in that respect, and "in that relation are bound to the same measures of good faith toward the counties which is required of an ordinary trustee toward his cestui(592) que trust, or an agent toward his principal." State ex rel. Garland County v. Baxter (Ark. Sup.), 8 S.W. 188; Willard V. Comstock (wis. Sup.), 17 N.W. 401, 406. 'County courts are * * * the agents of the county, with no powers except what are granted, defined and limited by law, and, like all other agents, they must pursue their authority, and act within the scope of their powers.' State ex rel. Quincy, Mo. & Pac. R. Co. v. Harris, 96 Mo. 29, 37, 8 S. W. 794. * * *"

We would call your further attention to the case of Elliot v. Buffington, 149 Mo. 663, which holds in substance that a sale by a county court of lands belonging to the county is a sale by the county.

In view of the above it is the opinion of this office that the only body within a county which is authorized to convey county property is the county court, and that a county court is so authorized.

In reply to your second inquiry, to wit:

"Would a deed executed by the county court be sufficient to pass good title, or will a commissioner have to be appointed to make the deed under the order of the court?"

We would call your attention to Section 13784, R. S. Mo. 1939, which states:

"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."

It is the opinion of this office that Section 13784, supra, is permissive and not directive, that is, that for purposes of convenience or expediency a county court may appoint a commissioner to sell and dispose of any real estate belonging to the county, but that it is not obliged to do so. In support of this position we would call your attention again to the case of Elliot v. Buffington, 149 Mo. 663, which holds that a county court may dispose of real property belonging to the county by appointing a commissioner to sell the county land and make a deed to it in his capacity as a commissioner, or that the county court may dispense with a commissioner and make the deed itself. There is a line of Missouri decisions subsequent to the Elliot case which sustains this position, and it is, of course, only reasonable that such should be the case. A county court--or any other principal--cannot convey to a commissioner--or any other agent--more power than it possesses itself, and therefore, any act which could be done by a commissioner appointed by the county court could be done by the court itself.

CONCLUSION

It is the opinion of this office that a county court has the power and authority to convey real estate belonging to the county. It is the further opinion of this office that such conveyance can be made by the court itself without the appointment of a commissioner.

Respectfully submitted,

APPROVED:

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