

COUNTY BUILDINGS: The circuit court of a county cannot re-
COUNTIES: quire the county court to appropriate
COUNTY COURT: money for the repair of the county court-
 house, or to order by mandamus or other
action the county court to repair the courthouse unless the county
court abused or arbitrarily exercised its discretion.

OPINION NO. 505

October 9, 1970

Honorable E. Richard Webber
Prosecuting Attorney
Scotland County
110 West Monroe Street
Memphis, Missouri 63555



Dear Mr. Webber:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"A Schuyler County official has requested that I contact you for an opinion. In 1970, a new courthouse was built in Schuyler County, Missouri. Since that time, almost nothing has been spent by the county for maintenance and repair to the new building. It is in a very bad state of repairs at the present time. Plastering is loose in places, the roof leaks, the windows have not been painted and have rotted, the railing has rotted and is about to fall, and the entire building is generally in a bad state of repairs.

"First, does the circuit court judge have jurisdiction to require the county court to appropriate money for the repair of the courthouse? Second, can the prosecuting attorney by mandamus or other action require the county court to repair the courthouse?"

There are several statutes specifically relating to county buildings and the power of the county court which are pertinent to the inquiry.

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Section 49.310, RSMo 1969, reads in part as follows:

"The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county; except, that in counties having a special charter, the jail or workhouse may be located at any place within the county. In pursuance of the authority herein delegated to the county courts, the county courts may acquire a site, construct, reconstruct, remodel, repair, maintain and equip the courthouse and jail, and in counties wherein more than one place is provided by law for holding of court, the county court may buy and equip or acquire a site and construct a building or buildings to be used as a courthouse and jail, and may remodel, repair, maintain and equip buildings in both places "

Section 49.320, RSMo 1969, reads as follows:

"Whenever the county court of any county thinks it expedient to erect any of the buildings aforesaid, the building of which is not otherwise provided for, and there are sufficient funds in the county treasury for that purpose, not otherwise appropriated, or the circumstances of the county will otherwise permit, they shall make an order for the building thereof, stating in the order the amount to be appropriated for that purpose."

Section 49.470, RSMo 1969, reads as follows:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

Section 49.510, RSMo 1969, reads 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."

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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."

Thus, the county court has the power and duty to erect and maintain a sufficient county courthouse and to provide offices or space to the county officers to carry out their duties.

The power to erect a courthouse under Section 49.320 is discretionary in the county court, Decker, et al, v. Deimer, et al, 229 Mo.296, 129 S.W.936,944 (1910); and this discretion cannot be controlled by mandamus. State ex rel. Howell County v. Howell County Court Justices, 58 Mo.583 (1875). In the Howell County Court Justices case the court stated the plaintiff's allegations, l.c. 584:

" . . . It was averred, that the court house in the county was a poor and insufficient building, and that it would be greatly advantageous to have a better one; . . . "

The court said, l.c. 585:

" . . . This law leaves the erection of the buildings entirely to the sound discretion and judgment of the County Court, and that discretion cannot be controlled by mandamus."

In Vitt v. Owens, et al., 42 Mo.512 (1868), the circuit court attempted to enjoin the county court from making certain repairs to the county courthouse. The presiding judge of the county court sought prohibition against the circuit court. The Supreme Court said, l.c. 513,514:

" . . . The County Courts have an exclusive jurisdiction over the subject of repairs of county buildings and the removal of the seat of justice. . . . These matters belong to the administrative and ministerial functions of the County Courts, and not to the judicial branch of their jurisdiction; and for this reason it has been decided that even a prohibition will not lie from the superior courts of justice to restrain them from proceeding in such matters according to their own judgment and discretion. . . . In this matter of repairs, the County Court was proceeding, of its own motion, in the exercise of its proper jurisdiction, and there were no parties to any suit at law. It is true that in proceedings of this nature, where there is no

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appeal or writ of error, the Circuit Courts have a superintending control over the County Courts, which may be exercised in certain cases and in a proper way, according to the usages and principles of law. . . . It might be exercised in a proper case by mandamus. . . . But where the whole subject is placed under the exclusive jurisdiction of the County Court, and involves the public interest and convenience alone, as in the matter of establishing or vacating public roads, it has been held that a mandamus will not lie from the Circuit Court. . . . We need not undertake to define in what cases the Circuit Court might interfere by mandamus. . . . "

There are certain inherent powers of the circuit courts to provide themselves with necessaries. The Supreme Court in *State ex rel. Gentry et al., v. Becker, et al.*, 351 Mo.769, 174 S.W.2d 181, 183 (1943) stated the general rule as follows:

" . . . 'The courts have the inherent power and authority to incur and order paid all such expenses as are (reasonably) necessary for the holding of court and the administration of the duties of courts of justice.' . . . The limitation on the courts' inherent power is that the expense incurred or the thing done must be reasonably necessary to preserve the courts' existence and protect it in the orderly administration of its business. . . . "

See also *State of Missouri ex rel. McNeil*, 42 Mo.496 (1868).

Furthermore, there is the duty of the county to provide offices or space for the county officers to perform their duties. Section 49.510, supra. We believe that it may reasonably be inferred from Section 49.510 that the office or space which the county must provide must be adequate and adaptable to the purposes of the officer for whom it is provided. However, it is the county court which initially determines such questions of adequacy and suitability. As was said in *Buchanan v. Ralls County*, 283 Mo.10, 222 S.W.1002,1004 (1920), wherein the suitability of office space provided to a county treasurer was in issue:

" . . . whether or not such room was reasonably suitable room for respondent's use, under the circumstances, becomes a question of fact, unless, in the light of the evidence, the impracticability or unsuitableness of such an arrangement is so obvious that the minds of reasonable men could not honestly differ about it. . . . "

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In Bradford v. Phelps County, Mo.S.Ct., 210 S.W.2d 996,1001 (1948), the Missouri Supreme Court said:

" . . . It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or, if such were the charge, acted fraudulently or corruptly)."

It is clear, therefore, that the circuit court does not have inherent or statutory power to order the building of a county courthouse. Nor do we think that the circuit court can order by mandamus or otherwise the county court to repair or appropriate money to repair the county courthouse, unless the county court abused or arbitrarily exercised its discretion.

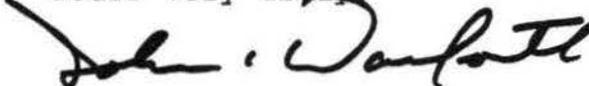
Under the facts presented it does not appear that the repairs listed are reasonably necessary to preserve the circuit court's existence, nor does it appear that the county court abused or arbitrarily exercised its discretion.

CONCLUSION

Therefore, it is the opinion of this office that the circuit court of a county cannot require the county court to appropriate money for the repair of the county courthouse, or to order by mandamus or other action the county court to repair the courthouse unless the county court abused or arbitrarily exercised its discretion.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General