

Warrants for Payment of Money:

1. ✓ County court has power to order warrants already issued not to be paid, even though such order be made at a subsequent term of court to the one at which the warrant was issued.

11-23
November 15th
1933



Mr. C. Arthur Anderson,
Prosecuting Attorney,
Clayton, Missouri.

Dear Mr. Anderson:-

We have your letter of November 10, 1933, in which is contained a request for an opinion as follows:

"Relative to your letter of November 9th, respecting the opinion requested by us on October 2nd, we will amplify our statement of the facts as follows:

"In the May Term of the County Court, several former judges of the County Court made a claim for salary which they claimed was due them. These claims were based on the fact that St. Louis County had increased in population during their tenure of office and that they had consequently drawn less salary during their term of office than that to which they were legally entitled.

"The judges of the present County Court allowed their claims and the clerk of the County Court was ordered to issue warrants to each of the claimants for the amount requested in their various claims. These warrants were drawn as ordered by the Court. One warrant so drawn was presented to the Treasurer and was paid.

"Prior to the presentation to the County Treasurer of the balance of the warrants so drawn, and at a subsequent term of court, the County Court directed the County Treasurer not to pay the warrants previously issued until the validity of the claims had been adjudicated by the Circuit Court.

"The Treasurer is in this position now, there are several warrants directed to the Treasurer for the payment of several sums and there is also an order of the County Court directing him not to honor these warrants. The Treasurer wants to know what action he should take in the matter, inasmuch as these people are making persistent demand for the payment of their warrants.

"We will appreciate receiving an opinion from you on the above."

This question was recently passed on by the Supreme Court of Missouri in the case of Jackson County vs. Fayman, 44 S. W. (2d) 849, 329 Mo. 423 (1931). In that case Jackson County brought suit against J. H. Fayman, County Treasurer, and his surety to recover the amount of a county warrant alleged to have been wrongfully paid. The County Court had issued the warrant and then ordered it cancelled a year later. The County Treasurer paid the warrant some time later in spite of such order. The trial court gave a peremptory instruction to the jury to find for the defendant. Inasmuch as this case is conclusive as to the law on the matter in this state, we quote from the opinion of the court in same.

On page 852 in such opinion the court stated:

"The error of the trial court lies in holding that the county court acted judicially both in ordering the warrant issued and in ordering it canceled, whereas neither was a judicial act in the sense of being res adjudicata."

Also, on page 852, the court used the following language

"By our Constitution, county courts are created and are given jurisdiction to transact all county business. Article 6, Sec. 36. By statute, section 2078, R. S. 1929, such courts are given power 'to audit and settle all demands against the county.' And section 12162, R. S. 1929, provides that 'the county court shall have power to audit, adjust and settle all accounts 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.' The county court, when it ascertains any sum of money to be due from the county, shall order the clerk to issue a warrant in a prescribed form. Section 12163, R. S. 1929. And the county treasurer 'shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court.' Section 12136, R. S. 1929."

Further, on page 853 of the same case:

"It has been held by this court, through an unbroken line of decisions since the case of Marion County v. Phillips, 45 Mo. 75, that the action of the county court in making settlements with county officials is not judicial, but that, in such cases, the judges act merely as the fiscal or administrative agents of the counties. State v. Roberts, 60 Mo. 402; State v. Roberts, 62 Mo. 388; Cole County v. Dallmeyer, 101 Mo. 57, 13 S. W. 687; State v. McGonigle, 101 Mo. 353, 13 S. W. 756 (8 L. R. A. 735, 20 Am. St. Rep. 609). The action of county courts in auditing accounts is given no more sanctity by the law than that exercised in making settlements with county officers, and their orders are not entitled to be clothed with superior verity."

And again on page 854 we find this language:

"It will be noticed that the courts have frequently likened the orders of county courts allowing claims and the county warrants issued thereunder to checks, drafts, or promissory notes of the county, the enforcement or collection of which may be resisted by the county for good cause, such as want of consideration. We think that from the reason of the thing, and the analogy of such warrants to checks or drafts drawn by the county, the formal action of the county court in ordering a warrant canceled, at least where a third party such as the county treasurer is concerned, on information that such warrant does not represent a valid indebtedness of the county and should not be paid, would be, when necessary to protect such third party or the funds in his hands, perfectly proper, and has the same effect as stopping payment of a check or draft by notice to the party called on to pay same."

On pages 856 and 857 we find a good statement of the theory behind the decision:

"While county courts should not arbitrarily and without reason recall and order warrants already issued not to be paid, yet the public good will be best served by allowing large discretion to the county courts in such matters."

And finally we find the holding of the court on page 857:

"We are holding that defendant's payment of the warrant after the county court's order annulling same was at his peril, and that plaintiff was entitled to a trial of the issue of whether Jackson county was in fact indebted to Ross, and, if so, how much, for work done and material furnished under his road contract. To that end, the case should be reversed and remanded, and it is so ordered."

From the above language of the court it can be seen that should your County Treasurer attempt to pay the warrants in question in the face of an order by the county court directing him not to do so, he would be acting without authority. The language of the court in the case of Clay County Court vs. Baker, 241 S. W. 447, l.c. 449, is elucidating:

"The treasurer in this case is only the court's animated strong box, as it were."

Mr. C. Arthur Anderson

-4-

November 15, 1933.

It is the county court which controls the county funds and the treasurer is subject entirely to its orders.

In the premises, therefore, we are of the opinion that your county treasurer should not pay the warrants in question.

Very truly yours,

CMHJr:LC

CHARLES M. HOWELL, Jr.
Assistant Attorney General.

Approved:

Attorney General.