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(Opinion relating to the annual financial statement of counties as provided under section 12165. Laws 1933 page 363.)

Jefferson City, Mo., January 28, 1934

Mr. Paul Boone  
Prosecuting Attorney of Ozark County  
Gainsville, Missouri

Dear Sir:

This department acknowledges receipt of your letter of date January 15th, 1934, in which you state and inquire as follows:

"The County Court of this county has refused to designate a person to make the financial statement of the county as provided by the 1933 Session Laws. Please advise me whether or not is the duty of the County Clerk to prepare this statement under these circumstances without being designated by the Court."

The answer to the question raised in your letter must find solution under Sections 12165 and 12166 Laws 1933, pages 363-7. That portion of said sections pertinent here, reads as follows:

Section 12165

"On or before the first Monday in March of each year after the taking effect of this act the County Court of each county in this state shall prepare and publish in some newspaper of general circulation in such County, if such there be, and if not by notices posted

in at least ten places in such County, a detailed financial statement of the County for the year ending December 31, preceding.....  
At the end of the statement the person designated by the County Court to pre-  
pare the financial statement herein required shall append the following certificate:.....  
Or if no one has been designated said statement having been prepared by the County Clerk, signature shall be in the following form: Clerk of the County Court and Ex-officio officer designated to prepare financial statement required by Section 12165 R.S., 1929."

**Section 12166 (Supra):**

".....The County Court shall not pay the Publisher until proof of publication is filed with the Court and shall not pay the person designated to prepare the statement for the preparation of the copy of said statement until, etc.....If the County Court shall employ any person other than a bonded County officer to prepare the financial statement herein required the County Court shall require such person to give bond, etc."

**Statutes imposing duties and conferring powers on officers or either mandatory or directory.**

This department holds that it is mandatory upon County Courts of this State to have a financial statement published, as provided under sections 12165 and 12166 (Supra). For the reason the exercise of the power granted the County Court therein is necessary to protect the public interest.

It is also the opinion of this department that under the provisions of sections 12165 (Supra) that the County Court may designate someone other than the County Clerk to make out

and prepare said financial statement, but if no one has been designated, by the Court, then under Section 18166 (Supra) the County Clerk may prepare the statement.

In State ex rei Hydee v. Haskman, 276140 l.c. 116, the Court said:

"But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual, is conferred by implication."

So much being true, and the statute which defined the duty of the County Court, that "they shall prepare and etc.," and further: "or if no one has been designated said statement having been prepared by the County Clerk etc." It follows by necessary implication that the Clerk is authorized to make said financial statement. We think this construction should be sustained.

However notwithstanding the right of the Clerk to prepare the financial statement under the circumstances herein outlined, perhaps a better plan would be for some interested tax payer to proceed against the County Court by mandamus to force the Court to act by designating of record someone to prepare said financial statement.

Respectfully submitted

*Barnes*

Assistant Attorney General

APPROVED:

\_\_\_\_\_, Attorney General