

CONTRACTS: Agreement entered into by the County Court of Morgan County and physician appointed to act as Deputy State Health Commissioner is not a valid contract under Sec. 2962, R.S. Mo. 1929.

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January 9, 1934.



Hon. Minor C. Livesay,
Prosecuting Attorney,
Versailles, Missouri.

Dear Sir:

This department is in receipt of your letter of December 11, 1933 in which you request an opinion as to the following state of facts:

"I have been requested by the County Court of Morgan County to obtain the opinion of your office on the following question:

The facts are that pursuant to the provisions of Section 9025, Article 1, Chapter 52 of the Revised Statutes of Missouri for the year 1929, the County Court appointed a physician to act as Deputy State Health Commissioner for this county. A contract was entered into between the county and the physician (a copy of said contract enclosed providing also that the physician should be the county physician for county patients for a term of three years.

Has the act of the Legislature, as appears at page 271 of the session acts of the year 1933 repealing above mentioned section, made this contract now null and void, or may they allow him to continue under the terms of the contract?"

I.

The agreement entered into by the County Court is not a valid contract under Section 2962, R.S. Mo. 1929.

Section 9025, R.S. Mo. 1929 provides as follows:

"At the first regular February term of the county court in each county of the state after this article becomes effective and at the regular February term of said county court every third year thereafter said court shall appoint a reputable physician as a deputy state commissioner of health for that county for a term of three years. In case of a vacancy in the office of the deputy state commissioner of health of a county, the county court shall at its next regular term of court appoint a reputable physician for the unexpired term. If the county court fails to appoint a deputy state commissioner of health as above provided at the February term of said court or at the next term following a vacancy, the state board of health shall appoint a reputable physician as deputy state commissioner of health for that county who shall serve until the county court of such county makes such appointment. The county court of any county upon appointing a physician as deputy health commissioner shall confer with such physician and agree with him as to his compensation and expenses for the performance of his duties as deputy state health commissioner of that county and such compensation and expenses shall be paid to him out of the county treasury of that county. If it becomes necessary for the state board of health to appoint a deputy state health commissioner, as above provided, said state board of health shall fix a reasonable compensation for such deputy state health commissioner and shall designate what shall be his reasonable expenses, all of which shall be paid out of the county treasury of the county of which he is deputy state health commissioner."

This section was amended by Section 9025, Laws of Mo. 1933, page 271, as follows:

"At the first regular February term of the county court in each county of the State after this article becomes effective and at the regular February term of said county court

every year thereafter, said court may appoint a reputable physician, as a Deputy State commissioner of health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this act, it shall agree with said commissioner as to the compensation and expenses to be paid for such services, which amount shall be paid out of the county treasury of the county."

The Act of 1933 changed the term of the Deputy State Commissioner of Health from three years to one year. The question here before us is whether or not the Act of 1933 renders invalid the "contract" entered into between the County Court and the Deputy State Health Commissioner on the 10th day of March, 1932, for a term of three years.

Article II, Sec. 15 of the Constitution of the State of Missouri provides:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

In view of this section of the Constitution, if the agreement entered into between the County Court and the Deputy State Health Commissioner is, in law, a contract, then the Act of 1933 can not affect the validity of said contract.

Section 2962, R.S. Mo. 1929 provides:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration,

shall be in writing and dated when made, and shall be subscribed by the parties hereto, or their agents authorized by law and duly appointed and authorized in writing."

In view of this section of the statutes of Missouri, the agreement here entered into between the parties cannot be said to be a valid contract. The provision that the contract "shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing" is totally ignored by the agreement--in fact, there are no signatures to the agreement at all.

CONCLUSION

From a consideration of the foregoing, it is the opinion of this department that the agreement here submitted does not comply with the provisions of Sec. 2962, R.S. Mo. 1929 and is not, in law, a binding contract. It amounts to no more than an appointment made by the County Court for a period of three years. Under the Act of 1933, the County Court may appoint a Deputy Health Commissioner for one year only. This Act is binding upon the County Court and the agreement entered into in 1932 is therefore now of no force and effect whatsoever.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

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