

COUNTY CLERK: County Court can make contract with County Clerk to make second tax book if it believes the extra book is necessary for the collection of the taxes.

10-5
September 19, 1934.



Honorable Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

This department acknowledges receipt of your letter of some time ago, same being as follows:

"Sections 9876 and 9877 as revised by the 1933 Session of the Legislature establishes a new method for the making of the tax books by the County Clerk which eliminates the second book, a complete copy, which has been made in previous years.

However, our attention has been called to the fact that some of the county courts have authorized their county clerks to continue to make this second book, the county court agreeing to compensate the county clerk for this service. Does the county court have such authority and can the clerk retain the fee allowed him by the county court?"

The sections to which you refer were repealed in 1933 and two new sections designated as Sections 9876 and 9877 were enacted in lieu thereof. Section 9876, Laws of Mo. 1933, p. 421 is as follows:

"As soon as the Assessor's book shall be corrected and adjusted, the Clerk of the County Court, except in St. Louis City, shall, within ninety days thereafter, extend the taxes therein in proper columns prepared for such extensions, which book, with the taxes so extended therein, shall be authenticated by the

seal of the Court as the tax book for the use of the Collector; and when the Assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each volume shall be authenticated by the Clerk with the seal of the Court. And upon a failure to make out such extension of taxes in the Assessor's book or books, as the case may be, and deliver same to the Collector in the time specified, the County Court shall deduct twenty per centum from the amount of fees which may be due the Clerk for making such extension, and such Assessor's book, with the taxes so extended therein, shall be called the "Tax Book".

Section 9877, Laws of Missouri 1933, page 422 is as follows:

"When the books or lists for the collectors are completed, the county clerk, except in St. Louis City, shall make a complete statement of the assessment and taxes charged, on blanks and in conformity to instructions, furnished him by the State Auditor. The clerk shall record said statement and forward it to said auditor. The clerks of the county courts shall receive ten cents per hundred words and figures for all words and figures extended by him in making out the tax book, one-half thereof to be paid by the state and other half by the counties, respectively: Provided, that compensation of clerks for making out and certifying to the auditor an aggregate abstract of the tax book shall be paid by the state."

Section 9876, R.S. Mo. 1929, which was repealed, contained one phrase which was eliminated in the new section, the pertinent part of which is as follows:

"As soon as the Assessor's books shall be corrected and adjusted, the Clerk of the County Court, except in St. Louis City, shall, within 90 days thereafter, make a fair copy thereof with the taxes extended thereon.***"

We assume that the phrase "make a fair copy thereof" is the authority for the expression in your letter "which eliminates the second book"; therefore, the question arises: Has the county court authority to continue to make this book and compensate the county clerk for making the same?

We are confronted at the outset that no county officer can collect any fees when the statute does not expressly provide for the same. This is such a well known principle of law that we will not quote the authority for same here. Your letter does not state that the county clerk is to receive these fees in addition to his salary or that the fees become a part of his legal salary; however, we assume that they are to be in addition thereto.

We do not know why the county courts desire the extra book, but we assume there is a valid reason and that the book will facilitate in some manner the collection of taxes.

Under the title of "Powers and Functions", 15 Corpus Juris, page 456, we find the following:

"Except as otherwise provided by law, a board of county commissioners or county supervisors ordinarily exercise the corporate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction over all matters pertaining to county affairs. Within the scope of its powers, it is supreme, and its acts are the acts of the county. While acts outside their statutory powers are without validity, yet, within the limits of the jurisdiction conferred on them by law, county boards have a wide, or at least a reasonable, discretion; and courts will not interfere with such boards in the lawful exercise of such jurisdiction, on the sole ground that their actions are characterized by lack of wisdom or sound discretion, it being permissible for equity to interfere only in cases of fraud or a clear abuse of discretion. The county board cannot exercise its constitutional jurisdiction within the territorial limits of another county, nor can it justify its failure to perform a statutory duty, on the ground that obedience to the law is not necessary."

Likewise, there is a statutory limitation section in 15 Corpus Juris, p. 457, which is as follows:

"Provided it violates no constitutional provisions, the legislature may, after conferring powers on a county board, limit, enlarge, or curtail them, as it sees fit; and it may even take away the statutory powers of the board, although the board exists by virtue of a constitutional provision. It is well settled that a county board possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. It must necessarily possess an authority commensurate with its public trusts and duties. Therefore it possesses inherent authority to perform acts to preserve or to benefit the corporate property of the county intrusted to it. However, where there is doubt as to the existence of its authority, it should not be assumed. Acts done outside its statutory authority are void and not binding on the county. *****"

In the case of State ex rel. v. County Court of Clinton Co., 193 Mo. App., l.c. 378, the Court said:

"We are of the opinion that since the county court can exercise only such powers as are expressly or impliedly granted it by the Legislature, and since the Legislature has seen fit to delegate to such court the power to license pool tables, and has not granted the right to prohibit, the county court cannot, in a case where it is admitted there is no discretionary reason for refusing, withhold such license in order to prohibit the keeping of pool tables together. Where a county court has, in the rightful exercise of its discretionary power, refused to grant a license, its action therein is final since there is no method of appeal or review provided by the statute. But it cannot refuse a license where, under all the circumstances, it would grant it were it not attempting to prohibit that which the legislative power has not seen fit to have prohibited."

The foregoing case is not directly in point on the question involved; however, from the decision we glean that the county court can exercise only such powers as are expressly or impliedly granted to it by the Legislature.

CONCLUSION

As stated in the beginning of this opinion the question arises as to whether or not the making of this extra book is necessary to facilitate and aid in the assessment and collection of taxes. This is largely a question of fact. If the county court conscientiously believes that the extra book is necessary for the expeditious collection of the taxes, for the general welfare of the county and its financial interest, then it is the opinion of this department that the county court has the right to make the contract and pay the county clerk for the same by its implied powers.

Respectfully submitted,

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APPROVED:

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