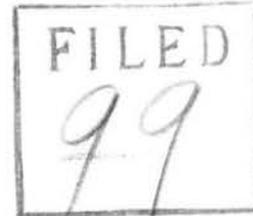


COUNTY COURTS:

County Court cannot relieve itself of the duties imposed by statute, relative to the poor, by delegating its duties to a board established by it.

12/23

December 23, 1935.



Honorable John J. Wolfe  
Associate Prosecuting Attorney  
St. Louis County  
Clayton, Missouri

Dear Mr. Wolfe:

This is to acknowledge your letter as follows:

"The League of Women Voters and other civic organizations in St. Louis County prevailed upon the Children's Bureau of the U. S. Department of Labor, Washington, D. C., to conduct a survey of child welfare services in St. Louis County, and in August of this year the Bureau of the Department of Labor made its report.

"One of the parts of the report contained the following findings:

"Poor relief.

The statutes make the county court responsible for the administration of relief to the poor and in St. Louis County the court itself dispensed such relief. The court did not employ a staff to assist it in this work hence the investigation of such cases consisted only of the inquiry in open court and subsequent supervision was not given.'

"The inaccuracy and room for error in procedure administering monetary aid in

the above manner is, of course, obvious to any one familiar with the pauper situation of a county of this size and in the summary of recommendations, the Children's Bureau makes the following recommendation respecting public welfare:

"1. If legal authority for the establishment of a county department of public welfare can be obtained such a department should be set up with an advisory board of citizens appointed by the county court and containing one or more members of the county court. (An attorney general's ruling might make this possible if such a ruling could authorize the county court to delegate certain of its functions to properly appointed agents.)

" 'A qualified director and assistants in sufficient number to carry on the work of the department should be appointed by the county court on the recommendation of the advisory board on the basis of training and experience.'

"I should like very much to have an opinion from you as to whether or not the court could legally set up a department of Public Welfare in accordance with the above recommendation, and if you can give the matter of this opinion some preference I should like to be able to take the matter up shortly backed by your opinion, so that some intelligent handling of the welfare situation of the county can be obtained."

The narrow question presented in your inquiry for determination relates to the right of the county court to delegate its duties to a Department of Public Welfare, to be established by the county court.

It is our opinion that the county court cannot establish a Department of Public Welfare for the following

reasons: (1) There is no statutory authority for the establishment of such; (2) that if established there would be no provision for the paying of expenses of said department; (3) that the county court must perform the duties prescribed by statute, in person, and not delegate same to other persons.

Article 4, Chapter 90, R. S. Mo. 1929, relates to "County Poor, Support Of"; and Section 12950 provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 12953, R. S. Mo., 1929, provides as follows:

"The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

Section 12954, R. S. Mo. 1929, provides as follows:

"The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

A reading of the above sections pertaining to the support of the county poor, shows that the duty rests upon

the county court to provide relief and maintenance and support of poor persons when it is a direct relief. The county court has the right, however, when it establishes and maintains a poorhouse for the relief of poor persons, to make rules and orders for the governing of said poorhouse thus established. Nowhere in said article is it provided that the county court may set up a department or office for the purpose of paying direct relief or the giving of assistance to poor persons. Absent such statutory authority it is our opinion that the county court cannot do so. If the county court establishes a board of Public Welfare, then it is our further opinion that there is no statutory authority for the paying of expenses or salary of said board.

The paramount reason we are of the opinion that the county court cannot establish a department of public welfare is because the duties and powers imposed upon the county court for the direct relief of the poor involve a trust and confidence, judgment and discretion, and thus cannot be delegated.

In the Board of Commissioners of Excise of Delaware County v. Sackrider, 35 N. Y. Reports, p. 154, l. c. 156 et seq., the court said:

"\* \* \* It is not a case where the commissioners employ an attorney to bring particular suits, they themselves having first considered the question as to the propriety of the suits; but the attorney is left to act in the place of the board of commissioners and determine for them what suits shall be brought. The commissioners substitute the attorney in their place and stead, and undertake to depute to him all their authority, so far as they have authority, to determine any question as to the propriety of bringing suits against individuals for violation of the excise laws.

"In my opinion, the commissioners of excise are clothed with something more than a mere

naked authority; they are intrusted with an office which requires discretion, and are clothed with a trust which is to be exercised for the public good. Etc.

\* \* \* \* \*

"The duties of the office involve a trust and confidence which they cannot assign to a stranger. (Cases cited)

\* \* \* \* \*

"The law having cast the duty upon the board of commissioners of excise in such a case, I do not think it can be or should be deputed to third persons. Etc.

\* \* \* \* \*

"

In Perry and Finehout, Overseers of the Poor of the Town of Saratoga Springs v. Tynen, 22 Barbour's Sup. Ct. Reports (N. Y.) 137, l. c. 140, the court said:

"\* \* \* In cases of the delegation of a public authority to three or more persons, the authority conferred may be exercised and performed by a majority of the whole number. If the act to be done by virtue of such public authority requires the exercise of discretion and judgment--in other words, if it is a judicial act--the persons to whom the authority is delegated must meet and confer together, and be present when the act is performed; or at least a majority must meet, confer, and be present, after

Hon. John J. Wolfe

-6-

Dec. 23, 1935.

all have been notified to attend. \* \*"

See also, Commonwealth v. Armstrong, 4 Pa. County,  
5 and 6; Ruggles et al. v. Collier et al., 43 Mo. 353 l. c.  
365.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

JLH:EG

APPROVED:

---

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General