

COUNTY WARRANTS: County Treasurer is not liable if warrant is regularly issued and regular on its face - is liable if same violates County Budget Act.

January 13, 1936.

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Honorable Maurice Dwyer,
Treasurer of St. Louis County,
Clayton, Missouri.

Dear Sir:

This department is in receipt of your letter of some time ago requesting an opinion based on the following facts:

"Enclosed is a copy of a letter received from and signed by Mr. C.R. Kammerer, which is more or less self-explanatory.

"The warrant mentioned in the letter, i.e., No. 5130 - Road and Bridge Fund, will be due and payable December 16, 1935. For this reason I would like to have your opinion before that time as to just what weight or bearing this letter might have on the payment of the warrant, and my responsibility therein.

"It has always been my opinion that it is not incumbent upon the County Treasurer to inquire into the propriety of the issuance of warrants by the County Court and that it is compulsory for the Treasurer to honor any warrant when drawn properly by the County Court during session and signed by its presiding officer, etc., and that the responsibility rests solely and directly upon the County Court. Am I correct in this?"

"The facts related in 'Reason 3' are correct. Other than that I am in no position to say."

We have read the attached letter from Mr. C.R. Kammerer in which he in substance protests your honoring warrant #5130 in the sum of \$2,638.80. We shall first discuss the general liability which you might incur by payment of the warrant in question.

The general section relating to the power of the county court to audit and settle accounts is Section 12162, R.S. Mo. 1929, which is as follows:

"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; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; and if any person, being served with such summons, shall not appear according to the command thereof, the said court may compel his appearance by attachment; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said court may issue a summons, directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to said court, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with or transmit the accounts, books, documents or papers, or show good cause why he does not, at the time appointed for his appearance, the said court may enforce the delivery thereof by attachment; and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, and may commit to jail any person who shall refuse to answer any

lawful question: Provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

The form of the warrant is set forth in Section 12163, R.S. Mo. 1929, which provides:

"When a demand against a county is presented to the county court, the usual form of entry may be exemplified thus:

A B v. _____ county. The account of A B for the sum of _____ dollars being presented and inquired into, it is found by the court that the sum of _____ dollars is due him from the county, payable out of (express the particular fund, as the case may require), and for which the clerk is ordered to issue a warrant.

"When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form:

Treasurer of the county of _____, pay to _____ dollars out of any money in the treasury appropriated for (express the particular fund, as the case may require). Given at the courthouse, this _____ day of _____, 19____. By order of the county court.

A B, President,

Attest: C D, clerk."

Your duty in disbursing funds on warrants is found in Section 12136, R.S. Mo. 1929, which provides in part as follows:

" * * * He shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court."

The Supreme Court of Missouri in 1931 rendered an opinion on a case which arose in Jackson County in which a warrant was wrongfully drawn, and the county court attempted to rescind the payment thereof. The lower court held that the county court had no power to cancel the warrant - the case was reversed and remanded by the Supreme Court. The opinion, which is very exhaustive as to the powers of the county court and the county treasurer, is in part as follows (l.c. 432-433):

"By our Constitution county courts are created and are given jurisdiction to transact all county business (Art. 6, Sec. 36) By statute, Section 2078, Revised Statutes 1929, such courts are given power 'to audit and settle all demands against the county.' And Section 12162, Revised Statutes 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 (Sec. 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.' (Sec. 12136, R.S. 1929).

"The question here presented as to the binding effect of a county warrant regularly issued by the county court received full consideration by this court in *Sears v. Stone County*, 105 Mo. 236, in which it appears that Stone

County had employed one Heffernan, a lawyer, to perform legal services for the county. In due time Heffernan presented to such county court his claim for legal services rendered amounting to \$450 and the county court by proper order allowed the claim for that amount and ordered a warrant issued. Just how or why the warrant so issued was not paid is not shown, but the holder was driven to a suit against the county on the warrant. The county defended on the ground that the warrant was issued without consideration. No charge of actual fraud committed in procuring the warrant was made. The plaintiff claimed that the order of the county court in allowing the claim and ordering the warrant issued constituted an adjudication or at least was binding as to the amount and validity of the claim and the warrant issued therefor, and that this matter could not be again questioned. The court stated the issue raised thus: 'The proper determination of this case depends upon whether county courts, in auditing claims, and ordering warrants against the counties, act in a judicial capacity thus giving to their orders the verity and conclusiveness of judgments, or whether they act merely in the character of financial or administrative agents of the counties by which their acts entered of record have simply the force and effect of contracts which are subject to impeachment for want of consideration.'

And further, the Court said (l.c. 437-438):

"In the State of Oregon where the functions and duties of the county court and treasurer are similar to those of Missouri, the county court ordered the treasurer not to pay a warrant which had been issued, giving no notice whatever to the holder of the warrant. The holder of the warrant then brought an action in mandamus to compel the payment of the warrant. The treasurer set up the order of the county court as a defense. The court sustained him and refused to issue the writ, saying (Frankl v. Bailey, 50 Pac.

187, l.c. 188):

'The county court is charged, under the statute, with "the general care and management of county property, funds, and business where the law does not otherwise expressly provide." (Hill's Ann. Laws Or., Subsec. 9, Sec. 896) By Section 2460, Id., it is provided that "the county treasurer shall receive all moneys due and accruing to his county, and disburse the same on the proper orders issued and attested by the county clerk." The warrant in question was directed to be issued by the county court, and the legitimate basis for such warrant was the order of the court settling and allowing plaintiff's demand against the county. As we have seen, the alternative writ shows that the court was acting merely as the fiscal agent of the county in making the settlement and entering the said order. Such being the case, the order cannot be said to rise to the dignity of an adjudication as between the claimant and the county. While the orders of the court acting in such a capacity may have the force and effect of accounts stated as against the county,the court could, if it saw fit, as an individual might, refuse to observe the obligations thereby imposed, in which case the only remedy left would be an action against the county to require their due observance. It has been held in a late case that warrants such as here exhibited are but evidence of indebtedness, and constitute no final adjudication, as against the municipality, of the claims which they represent. They afford prima-facie evidence that the municipality is legally indebted to the holder thereof, but do not conclude it on that point, and that, in effect, they are nothing more than non-negotiable promissory notes, open to all defenses in the hands of the holders available as between the original parties, but that they may be made the basis of an action against the county. See Goldsmith v. Baker City (Ore.), 49 Pac. 973. Now the county court, having charge of the county funds has directed

the county treasurer not to pay this alleged obligation of the county, which is an indirect way of disavowing the court's liability; and, as the warrant is not based upon an order having the binding effect of a judgment against the county, we can see no reason why the treasurer is not precluded by the prohibitory order from using the county funds in discharge of the warrant. It is the duty of the treasurer to disburse the funds upon "the proper orders, issued and attested by the county clerk." But here is a warrant which the court has determined--and we must presume for some legitimate reason--should not be paid, and therefore not proper to be honored by the treasurer."

The duty of the County Treasurer to pay warrants in proper form is discussed in the same case (County of Jackson v. Fayman) l.c. 438-439):

Defendants have cited a number of cases, most if not all of them being suits in mandamus to compel ministerial officers to pay county warrants, in which it is claimed that this court has held that the issuance of such warrant by the county court involves a judicial finding of its validity binding on the county court and which cannot again be opened up or inquired into. Mandamus is a short cut in legal procedure where the ordinary procedure is less adequate and therefore held inadequate, but in such procedure questions of fact going to the merits may be inquired into as well as questions of law. The case most relied on by defendant is State ex rel. v. Treasurer of Callaway County, 43 Mo. 228. In that case the county court had allowed a claim and issued a warrant. Later the county court made a further order reducing the amount of the claim and ordering only the reduced amount to be paid. The amount deducted was a definite amount for a distinct item of service which the county court decided was not lawfully payable. Mandamus was brought to compel payment of the warrant as originally issued. What this court did do was to examine into the lawfulness of the payment of the rejected item, and,

finding it lawful and justly due, ordered the whole warrant to be paid. The decision itself and most of the opinion is in accord with the later rulings of this court. This case is not among the cases reviewed in *Sears v. Stone County*, 105 Mo. 236, supra, but what is there said of *Bank v. Franklin County*, 65 Mo. 112, and *State ex rel. v. Macon County Court*, 68 Mo. 49 applies to *State ex rel. v. Treasurer of Callaway County*, to-wit: 'So it is evident that when the court says, in the *Franklin County* case, that the order for the issuance of a warrant is a judicial ascertainment of the amount owing by the county, it is not meant that the order of the county court has the effect and conclusiveness of a judgment.' The further remark of this court in the *Callaway County* case, 'But where the allowance by the court has been regularly had upon a claim they are required to pass upon, and the warrant has been drawn and presented, and the court adjourned for the term, the treasurer has but one duty; and no subsequent court, not of superior jurisdiction, can excuse him from the performance of that duty,' has not been followed in later rulings of this court but has been virtually overruled. The court, however, further ruled correctly in saying: 'But in entertaining the application (for mandamus) we will look into the claim allowed by the court. It does not follow that, because it is the duty of the treasurer to pay, we will necessarily, in this form of action, order him to do so. If it should appear that the county court has, by mistake or otherwise, audited an illegal claim--one which should have been rejected--we will leave the parties to such remedies as they may have by ordinary proceedings.'"

In the *County of Jackson v. Fayman* case, supra, the Court holds that it is not your duty to investigate and determine for yourself the legality or validity of warrants, and in our opinion, that is the law, as was said in the opinion (l.c. 441-442):

"Much is also said as to the heavy penalties imposed on county treasurers as ministerial officers in refusing to

pay county warrants regularly issued by the county and presented for payment. It is true that such ministerial officers are not and should not be required to investigate and determine for themselves the legality or validity of such warrants and should ordinarily pay same without question. Here, however, the constituted authority which had caused this warrant to be issued, and whose order gave it birth and vitality, had taken on itself the responsibility of annulling its action and stamping out its life. The whole trouble here arises from the fact that this ministerial officer undertook to decide for himself that the action of the county court in issuing this warrant was a judicial act and a finality and that such court did not have the judicial power to set aside or modify its judgment after the term. That ministerial officers are not generally visited with penalties or held personally responsible when acting in good faith is held in State ex rel. v. Diemer, 255 Mo. 336. That they must at times assume some risk in the performance of judicial duties is unavoidable, and we commend defendant's action in taking a bond for his own protection on paying this warrant.

"It is urged that on our finding that the defendant county treasurer wrongfully paid the warrant in question out of the county funds, we should enter judgment for the recovery of the amount so paid out with interest. This, however, is not the theory on which plaintiff tried the case. It not only alleges defendant's wrongful payment of the warrant after its annulment, but that at the time of its issuance the county court was not indebted to Ross and that this warrant does not evidence a valid indebtedness due him; that his claim for road work done and material furnished was false and excessive, and that plaintiff was wrongfully induced to issue this warrant for more than or when nothing was actually due contractor Ross. 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."

CONCLUSION

In view of the last above quoted portion of the opinion in the case of County of Jackson v. Fayman, we are of the opinion that in accepting the warrant for payment you incur no personal liability providing the warrant is legal on its face and properly drawn by the County Court. We are, however, impressed with the last paragraph of your letter, which states: "The facts related in 'Reason 3' are correct. Other than that I am in no position to say."

Referring to "Reason 3" in Mr. Kammerer's letter, which is as follows:

"That the records of the St. Louis County Court show that on July 19th, an order was issued requiring the highway engineer to make up a voucher in the sum of \$2,638.80 in payment of this claim for a warrant drawn against the road tax fund; that contrary to and in violation of this, the warrant which you have protested was drawn against the road and bridge fund; that under the law no monies can be taken out of the road and bridge fund for anything except actual labor and materials on county roads",

it is our opinion that it is your duty to call this defect to the attention of the County Court so that the County Court may rescind its action, change the warrant, or issue it in legal form and on the proper fund.

We call your attention again to the provisions of the County Budget Act and especially those provisions which relate to counties of the population of St. Louis County. Section 12 of said Act (Laws of Mo. 1933, p. 348) provides for the contents of the budget and Section 20 (p.351) contains the liability of the officers for drawing warrants when there is not a sufficient amount unencumbered in the appropriation, or a sufficient

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unencumbered cash balance in the fund to pay the same or for any amount not legally owing by the county. Therefore, if Mr. Kammerer is correct in his statements as contained in "Reason 3", we suggest that it is possible you might incur personal liability if the warrant is drawn against the Road & Bridge Fund when as a matter of fact it should have been drawn against some other fund.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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