

COUNTY COURT: Cannot make gift to deputy sheriff injured in line of duty.

January 23, 1936.

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Hon. H. Glenn Weber,
Prosecuting Attorney,
Jefferson County,
Hillsboro, Missouri.

Dear Sir:

This department is in receipt of your letter of January 13 wherein you make the following inquiry:

"The County Court of Jefferson County, Missouri would like an opinion on the following question: Can the County Court make a gratuity to a deputy sheriff injured in the line of duty, where no legal liability exists against the County?"

"It seems that the Court feels a moral obligation to assist in some degree in the payment of doctor and hospital bills, but the Clerk will not issue the warrant in compliance with the Court order without a favorable opinion from your office."

If the County Court has the power and authority to make the donation or gift mentioned in your letter, it must be found in the Constitution or statutes prescribing the duties and powers of the county court, either expressly or impliedly. The section of the Constitution of the State of Missouri creating county courts is 36, Article VI, which is as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law.

The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

The general powers of county courts are discussed in the case of Knox County v. Hunolt, 110 Mo. 67, wherein the Court said (l.c. 74-75):

"Our county courts and the judges thereof perform many duties, some of which are judicial, others quasi-judicial, and others purely ministerial. It has been held that members of that court act ministerially in causing a suit to be brought in the name of the county to the use of the township school fund. Washington Co. v. Boyd, 64 Mo. 179. So directing warrants to be issued on different funds in payment of debts is a ministerial, not judicial, act.

"It is a well-settled rule that where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do the act, he is liable in damages at the suit of a person injured. In such cases a mistake as to his duty and an honest intention is no defense. Amy v. Supervisors, 11 Wall. 136; Ins. Co. v. Leland, 90 Mo. 177; Mechem on Officers, sec. 664.

"But where the public officer is by law vested with discretionary ministerial powers, and he acts within the scope of his authority, he is not liable in damages for an error in judgment, unless guilty of corruption or a wilful violation of the law. He is not liable for an honest mistake. This principle has been asserted by this court under a variety of circumstances. Reed v. Conway, 20 Mo. 23; Pike v. Megoun, 44 Mo. 492; McCutchen v.

Windsor, 55 Mo. 149; 48 Mo. 254;
Edwards v. Ferguson, 73 Mo. 686;
Washington Co. v. Boyd, 64 Mo.
179."

The powers of the county court are purely statutory, as was said in the case of Bayless v. Gibbs, 251 Mo. 492:

"County courts are not general agents of their counties. They are courts of limited jurisdictions, with powers defined and limited by the statutes, which constitute their warrant of authority, and when they act outside of or in excess of their statutory authority, their acts are null and void. * * *"

Again, in the case of Blades v. Hawkins, 240 Mo. 187, the Court said:

" * * * While it is true the law is strict in limiting the authority of these courts, it never has been held that they have no authority except what the statutes confer in so many words. The universal doctrine is that certain incidental powers germane to the authority and duties expressly delegated, and indispensable to their performance, may be exercised."

In the case of King v. Maries County, 297 Mo. 488, the decision respecting the power of a county court is in substance as follows:

"County courts are not the general agents of the counties, or the State, their powers being limited and defined by law and having only such authority as is expressly granted them by statute. The rule that county courts have only such authority as is expressly granted by statute is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out

and make effectual the purposes of the authority expressly granted."

The Legislature has seen fit to pass severe criminal statutes affecting members of the court. Section 9987, R.S. Mo. 1929, provides:

"Any county court or judge thereof, or county treasurer, or county clerk, or other county officer, who shall order the payment of any money, draw any warrant or pay over any money for any purpose other than the specific purpose for which the same was assessed, levied and collected, or shall in any way or manner attempt so to do, shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished as provided in section 9869."

Section 4091, R.S. Mo. 1929 provides:

"If any member of any town or city council, or of any county court or commission or body charged with the administration or management of the affairs of any county, or any executive officer or member of any executive department of any city, town or county in this state, or any member of any board or commission charged with the administration or management of any charity or fund of a public nature, by whatever name the same may be called, shall knowingly and without authority of law vote for the appropriation, disposition or disbursement of any money or property belonging to any such city, town, county, charity or fund, or any subdivision of any such city, town or county, to any use or purpose other than the specific use or purpose for which the same was devised, appropriated and collected, or authorized to be collected by law, or shall knowingly aid, devise or promote the appropria-

tion, disbursement or disposition of any such money or property, for any purpose not directed and warranted by law, and such illegal appropriation, disbursement or disposition be in fact effected, every person so offending against the provisions of this section shall be deemed and taken to have feloniously embezzled and converted to his own use such money or property; * * *

CONCLUSION

We have searched the statutes diligently regarding powers and duties of the county court and cannot locate any statute which gives the county court authority to make the donation or gratuity to the unfortunate deputy who was injured in line of duty, either expressly or impliedly, however commendable the attitude of the members of the county court may be.

We further fortify our conclusion by reminding you of the County Budget Act (Laws of Mo. 1933, pp 340-346) wherein expenditures of the county are classified in six different classes, five of which are definite as to the nature of the expenditures, the sixth being a class which can only be resorted to after the other five classes have been provided for, their priority having been sacredly preserved and there being no outstanding warrants of previous years in existence. Thus it may be said that the existence of the County Budget Act is an additional reason why the county court cannot make the donation, and the last paragraph of Section 8 thereof (Laws of Mo. 1933, p. 346) subjects the officer issuing the warrant to an action upon his official bond.

Respectfully submitted,

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APPROVED:

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

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