

COUNTY WARRANTS: (1) County officer is not permitted to buy or speculate in county warrants of any class; (2) county officer is entitled to interest on county warrant from date of presentation to date of payment; (3) county officer cannot have warrants issued to him, protested to himself and mail his check or cash to state hospital; (4) accounts for patients in state hospitals are paid by warrants made out to treasurer of hospital.

March 5, 1936.

3-9



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

Dear Sir:

This department is in receipt of your letter of February 25 requesting an opinion as to several questions in connection with officers speculating in county warrants. The first portion of your letter is as follows:

"Publicity recently given the cases of George M. Barham, sheriff and R. Kip Briney, Treasurer-Collector, respectively of Stoddard County, have occasioned considerable inquiry in this county as to the exact and lawful method of handling county warrants, and prompts me to seek rulings from you on the following questions which have arisen:"

(For convenience we shall attempt to answer your questions numerically as contained in your letter)

I

"Is a county officer permitted to purchase for investment any county warrants? If so, what class of warrants are permitted?"

Section 3955, R.S. Mo. 1929 relates to the purchasing, buying, trading for, any fee or warrant, either directly or indirectly, by clerks, deputies and officers of any court; said section is as follows:

"It shall be unlawful for the clerk of any court, or his deputy, or any person in his employ, or any person for him, or any other officer of any court, to buy or purchase, or trade for, directly or indirectly, any fee taxed or to be taxed as costs in the court of which he is clerk or officer, or of any other court in this state, or any county warrant, at less than par value, which may be by law due or become due to any person by or through any such court; and it shall be unlawful for any county clerk, circuit clerk, recorder, or any other officer of any court, or his deputy, or any person in his employ, to charge, collect or receive less fee for his services than is provided by law."

Section 4094, R.S. Mo. 1929 relates to officers speculating in county warrants, and is as follows:

"Every clerk of a court of record, sheriff, marshal, constable, collector of public revenue, or deputy of any such officer, or a judge of a county court, prosecuting attorney or county treasurer, who shall traffic for or purchase at less than the par value or speculate in any county warrant issued by order of the county court of his county, or in any claim or demand held against such county, shall be adjudged guilty of a misdemeanor, and shall, upon conviction, be punished by fine not less than twenty nor more than fifty dollars."

Your question contains the words "purchase for investment"-- Section 3955, supra, uses the words "or any county warrant, at less than par value", while Section 4094, supra uses the words "who shall traffic for or purchase at less than par value or speculate in any county warrant". We are unable to locate any decision wherein prosecutions have been conducted under these sections, except in the case of State v. Wilson, 130 Mo. App. 151, the court does not define the elements of the crime but holds that the evidence was insufficient to convict and for that reason alone reversed the

case.

In the case of State ex rel. v. Seibert, 130 Mo. 202, the question of a mandamus against the State Auditor to compel him to audit certain costs in a case was involved. The court held that a county officer could not maintain an action as an assignee because said county officer could not validly purchase any part of the fees. The court said (l.c. 221-222):

"An additional reason occurs for the rejection of the claim in question. It stands conceded on the pleadings and record herein, 'that J.L. Newhouse, the prosecuting attorney of Laclede county, is an interested party in said fees.' Now, when did that interest accrue? Was it prior or subsequent to his election as prosecuting attorney? We can take judicial notice of who were elected officers at the general election in 1892, and such notice embraces those who were elected to various official positions in Laclede County in that year. Among that number is J.L. Newhouse, then elected prosecuting attorney. 1 Greenl. Ev. (14 Ed.), sec. 6, and cases cited; Himmelmann v. Headley, 44 Cal. 213; Ragland v. Wynn's Adm'r., 37 Ala. 32; Wade, Notice (2 Ed.) sec. 1412. And where the judicial memory is at fault, it may resort to documents of reference.' 1 Greenl., supra. Turning to one of these, we find that J.L. Newhouse was elected prosecuting attorney at the general election in that year. Lesueur's Manual, 1893-4, 152.

"Under the public statute which will also be judicially noticed, he entered on the duties of his office on the first day of January next after his election. R.S. 1899, sec. 632. Turning then to the alleged supplemental fee bill, we find that a portion of the costs or fees therein mentioned accrued at the January term, 1893. And as the answer of relators' alleges that they are the owners of all the fees in question, it would seem that under the provisions of section 3751, Revised Statutes, 1889, Newhouse could not validly purchase any portion of the fees which accrued after his induction into

office. As to that portion, certainly no mandamus should lie so far as he is concerned, because mandamus requires the doing of a specific thing, something which can neither be diminished, halved, quartered, nor otherwise subdivided. Besides, it was the duty of relators, especially after making that fee bill a part of their answer, to make it plain that none of their number was incompetent to become a purchaser or co-assignee of the fee bill."

Sections 3955 and 4094, supra, have remained on our statute books unchanged for a number of years, and it is our opinion that when the Legislature passed the two statutes, it had in mind to prevent the temptation and the possibility of fraud and corruption on the part of county officers by virtue of their positions, and that it was the purpose of the Legislature to prohibit a county officer from in any wise purchasing or becoming the assignee of a county warrant. It is therefore the opinion of this department that no county officer can buy, traffic in, speculate, invest in, or become in any wise, either directly or indirectly, interested in any class of county warrants during his term of office.

II

"May he retain his individual salary warrant and have same protested to him?"

We find nothing in the statutes which would prevent an individual from using or disposing of his salary warrant as he sees fit. Section 12171, R.S. Mo. 1929 relates to the presentation of warrants, and is as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant and shall date and subscribe the same."

In the case of *Skinner v. Platte County*, 22 Mo. l.c. 438, the Court said:

"The question here is, will an allowance against a county in favor of an individual bear interest before the warrant against the county has been presented to the county treasurer for payment, and the treasurer's endorsement thereon, showing that payment was not made because there were no funds in the treasury to pay the demand? We think not. In order to draw interest, the warrant for the allowance must be made out and presented for payment to the treasurer; if he has funds to pay with, he pays the warrant without interest; if he has no funds to pay with, 'he shall so certify on the back of the warrant, date and subscribe the same.' (R.C. 1845, p. 311, sec. 6) From this date the warrant will bear interest. Here, the plaintiffs claimed their demand against the county of Platte in 1851; the county court allowed them four hundred dollars; they were dissatisfied with the court for allowing no more, and refused to accept a warrant for the sum thus allowed them. In March, 1855, they moved the county court to grant them a warrant for the said allowance of \$400, together with interest thereon from the date of said allowance. This the court refused to do, so far only as respected the interest. The plaintiffs appealed to the Circuit Court; that court sustained the county court, deciding that plaintiffs were not entitled to interest. The plaintiffs moved for a new trial, and being overruled, they excepted, and bring the case here."

In view of the above decision, it is our opinion that the individual warrant of a county officer may be presented, and if there are not sufficient funds to pay it, he is entitled to interest from the date of presentation, the same as any other holder of a warrant.

III

"Is it lawful for a county officer desiring county warrants for investment, to have its Class 1 warrants (hospital and eleemosynary) issued to him, protested to himself and in turn mail the hospital his cash or check to cover the account? Would the county court or county clerk sanctioning such procedure be legally liable and if so, to what extent?"

In view of our conclusion under Part I of this opinion and the authorities therein cited, it is the opinion of this department that no county officer may have warrants issued to him under Class 1 of the County Budget Act, protested to himself and in turn mail the state hospitals his check or cash to cover the account. This, we deem to be a flagrant violation of Sec. 4094, supra, and what we have said under Part I would apply to this question too.

Also, Section 12170, R.S. Mo. 1929 provides:

"Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, * * *"

It is clear that this section means that only persons who are legally entitled to have claims against the county allowed may draw the warrants.

It is our opinion that if the county court or the county clerk shall sanction or participate in such procedure, knowing at the time that it is illegal, such officers may become liable to prosecution under Sections 4094 and 3955, supra.

IV

"Is there any regular lawfully recognized method of procedure in regard to the issuance and payment of Class 1 warrants? Should they not either be issued to the party presenting statement for payment, or to the county treasurer, sent to the latter's office with copy of original statement attached or information showing who is to receive payment for the warrant?"

Section 8636, R.S. Mo. 1929 was repealed by the Legislature in 1935 and a new section enacted, which now reads as follows (Laws of Mo. 1935, p. 388):

"The several county courts shall have power to send to a state hospital such of their insane poor as may be entitled to admission thereto. The counties thus sending shall pay semi-annually, in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, not exceeding six dollars (\$6.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall die therein, for burial expenses; and in case such insane poor shall die or be removed from the hospital before the expiration of six months, it shall be the duty of the managers of such hospital to refund, or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same; and for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for."

The original section contained this provision: "And state hospitals are hereby expressly prohibited from receiving any county warrant in payment of any such sum as may be due by this section." The new section, you will note, contains no such provision.

Section 8642, R.S. Mo. 1929 provides:

"The superintendent shall, under the direction of the managers, cause, once in every six months, to be made out and forwarded to any county court which may send to a state hospital an insane poor person, an exact account

of the sum due and owing by such court on account of such insane person. Said court, at its first session thereafter, shall proceed to allow, and cause to be paid over to the treasurer of such state hospital, the amount of said account."

Under the terms of Section 8642, supra, when accounts are received by the county court for individual patients confined in state hospitals, it is their duty to allow the amount and to pay the same to the treasurer of the hospital, and it is therefore our opinion that it is the duty of the clerk to make out the warrant to the treasurer of the hospital.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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