

COUNTIES)
MATERIAL RELIEF)

Contracts of a county beyond
statutory powers are void.

January 31, 1938

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Honorable Ray Bennett
Presiding Judge
County Court
Kirksville, Missouri



Dear Sir:

We acknowledge your request for an opinion dated January 7, 1938, which reads as follows:

"We, the County Court of Adair County, Missouri, are requesting your opinion as to the legality of the enclosed agreement.

"In a few cases, we have made this type of agreement with certain residents of Adair County. As indicated in the sample enclosed, we agreed to give certain care in return for the transfer of property by these individuals to the County.

"We are asking your opinion on this matter so that we will know what action to take in similar situations in the future."

We acknowledge also the receipt of the contract between the County Court of Adair County and Martha E. Bishop, which we set out in substance hereafter.

Article VI, Section 36 of the Missouri Constitution provides:

"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."

Section 2962, R. S. Mo. 1929, provides in part:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, ** "

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

"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:

"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."

Section 12955, R. S. Mo. 1929 provides:

"The county court of the proper county shall allow such sum as it shall think reasonable, for the funeral expenses of any person who shall die within the county without means to pay such funeral expenses."

Section 12956, R. S. Mo. 1929 provides:

"The several county courts shall have power, whenever they may think it expedient, to purchase or lease, or may purchase and lease, any quantity of land in their respective counties, not exceeding three hundred and twenty acres, and receive a conveyance to their county for the same."

Under Article VI, Chapter 1, R. S. Mo. 1929, the county court may also provide relief for needy mothers and dependent children.

The terms of your purported legal agreement show that it is in the nature of the annuity insurance contract ordinarily sold by insurance companies. By the terms of your proposed legal agreement, the county of Adair proposes to go into the insurance business, the second-hand business and the real estate business, assuming that the law controlling county courts will sanction such projects as incident to contracts providing material relief. Said proposed contract, by its conditions, extends beyond the term of the existing county court, proposing to tie the hands of the succeeding county court and depriving them of their proper statutory

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powers. The only statutes which we can find touching on the subject matter of such a contract are above set out.

The vital problem presented by your request is this: Does the statutory power of the county of Adair to purchase real estate in the name of the county, and the duty and power of the county court to provide for the relief, maintenance and support of certain aged, insane, lame, blind and sick persons, and the statutory power to provide for certain needy mothers and certain dependent children, mean that the county court of Adair County can, as second party, enter into an agreement with one of those unfortunate, yet above described persons eligible to relief, as party of the second part, whereby such eligible person owning some real estate, furniture, household goods and personal belongings, "agrees and does convey" said real estate, furniture, household goods and personal belongings to Adair County, reserving a life estate in said property, and Adair County, as second party, then agrees to accept such a conveyance, and in consideration of such conveyance agrees to furnish board, room, lodging and necessary care up to \$10.00 per month during the lifetime of the first party, deducting all old age pension benefits, if any, and then paying the funeral expenses after death, and repairing, maintaining and keeping all buildings and improvements on the real estate, and finally permit second party to use all personal property during his or her lifetime?

The courts are slow to imply power in a county court not expressly given by legislative act. In the case of *Blades vs. Hawkins*, 144 S. W. 1198, 240 Mo. 187, 1.c. 195, the court said:

"The more important proposition, and the one chiefly controverted, is as to the power of the county court to employ an expert accountant to audit the public records and the accounts of present and prior officials. Its power to do so must be found in some express statutory grant, or else implied as essential to the proper execution of powers expressly granted or duties expressly im-

posed. Section 6759, Revised Statutes 1899, prohibits counties and other municipal bodies from making any contracts not within the scope of the powers of the municipality or expressly authorized by law. This provision is but declaratory of the common law; for these public corporations never have been deemed to possess authority to contract, or do any other act, unless the power was granted by statute or could be implied because necessary and incidental to the due performance of powers granted or duties enjoined. This doctrine applies to county courts and commissioners, as well as to the governing bodies of other subordinate political corporations. *** There is in our statutes no grant of authority to a county court to employ an expert to audit and examine the books and accounts of the county and its officers. Hence, if this authority existed in the present instance, it was because the law implied it as essential to the due exercise of powers specifically vested in the county court by statute or the performance of a duty specifically required of said tribunals. The courts are conservative in implying powers not expressly given. One limitation imposed by law on these implications is that no power will be implied to belong to a public corporation unless it is cognate to the purpose for which the corporation was created. ** "

In the case of King vs. Maries County, 249 S. W. 418; 297 Mo. 488, l.c. 496, the court said:

"It has been held uniformly that county courts are not the general agents of the

counties, or of the State. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. ** This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. ***

"In this case there is no claim that there was any statute which expressly gave to the county court power to employ the plaintiff in the capacity here involved. If such power existed at all it must be looked for among those powers which can be implied only as being essential to effectuate the purpose manifested in an express power or duty, conferred, or imposed upon the county court by statute. If such a power existed it must be one related to the subject with which the court was attempting to deal, and necessary to be exercised by the court in the discharge of a duty imposed by law upon that body. ** "

In the case of Bayless vs. Gibbs, 258 S. W. 590, 251 Mo. 492, l.c. 506, the court said:

"This court, in numerous cases, has repeatedly held, that the county courts of the respective counties of the State are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void.

CONCLUSION

The Constitution above quoted creates the county court as a body to take care of "county business", and Section 2962, supra, means that the county as a governmental business agent, has only such powers as are expressly given or necessarily implied in statutes constitutionally enacted, and the court so held in the Blades case, supra. Regardless of any benefit to the county or any value received by the county, we must apply the above rule of law in this matter.

The statutes above quoted make it county business to provide material relief to certain unfortunate persons. It is also county business to purchase real estate in the name of the county. We find no statute expressly giving the county power to execute the proposed agreement, to exchange material relief for the real estate and household goods, etc. of any person. If the county could do this, it is because such an agreement is in the scope of the county court's powers necessarily implied from statutory powers expressly given.

We assume that persons with real estate and household goods, etc. who apply for material relief, are otherwise qualified. Unless qualified, the county court has no business with them. Without considering the purported contract by the yardstick of public policy, we fail to understand how stripping such a miserable creature of ownership of all earthly belongings and in the nature of things meager belongings, could have been intended by the Legislature under any material relief statute giving the county court power to grant relief. We believe the Legislature intended qualified cases for county material relief to be charitably administered unto, pursuant to outright, unqualified material donations rather than by crafty uncharitable administration through a contractual scheme of qualifying said material relief.

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The Legislature did not intend these relief statutes to be used as a means of exchanging material relief for land, household goods, etc. The acquisition of such property is not necessary for any county purpose authorized by the statutes. It is not necessary that Adair County go into the real estate business, the second hand business or the insurance business, and especially so when the only authority to do so would be by statutory implications not reasonably intended by the Legislature. The temptation for hungry persons to execute such a contract with the county under duress, hence without consideration, would be apparent on the face of such an agreement.

We are of the opinion that such a contingent relief contract as proposed is absolutely void.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

J. L. TAYLOR
(Acting) Attorney General

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