

COUNTY COURT: County Court of Platte County cannot appoint a purchasing agent, but must purchase supplies for all county offices except that of sheriff.

March 14, 1939

Opinion requested
172
3/13/39

FILED
84

Hon. B. F. Spratt
Presiding Judge
Platte County
Weston, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of March 11th, 1939, which reads as follows:

"Would like to have an opinion from you regarding the purchase of supplies for Platte County.

"Have the Sheriff, County Clerk and different county officers the legal right to purchase their supplies for their offices?"

"Has the Presiding Judge or someone else, designated by the County Court, the right to act as purchasing agent for all county offices?"

The constitutional authority of the county courts is found in article 6, sec. 36 of the Missouri Constitution, which 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. * * * * *

In conformity with the above section of the Constitution, sec. 2078 R. S. Missouri, 1929, article 5, chapter 9, was enacted, and provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 12107 of article 5, chapter 85, R. S. Missouri, 1929, provides as follows:

"The county court may, by an order entered of record, appoint an agent to make any contract on behalf of such county for erecting any county buildings, or for any other purpose authorized by law; and the contract of such agent, duly executed on behalf of such county, shall bind such county if pursuant to law and such order of court."

The question to be determined is whether the county court may delegate to an agent, duties which belong to the court itself. The general rule, as stated in 15 C.J., section 116, page 465, is as follows:

"The right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant."

In the case of State ex rel Buckner v. McElroy,

309 Mo. 595, the court held that the term "county business," as those words are used in Section 36, Article VI, of our Constitution, declaring that the county court "shall have jurisdiction to transact all county and such other business as may be prescribed by law," means all business pertaining to the county as a corporate entity, and ordinarily includes the exercise of the corporate powers of the county and must be understood to include the control and management of all county property, whether such property be in the form of penal or eleemosynary institutions, such as the jail, the poor farm and county institutions, and that such power could not be invested in another board by the Legislature.

According to the last decennial census of 1930 Platte County had a population of 13819 and did not come under the classification as set out in sections 2107-2108 and 2109, of the Revised Statutes of Missouri, 1929, in reference to the purchasing of supplies. These three sections only apply to counties of not less than seventy thousand inhabitants nor more than ninety thousand inhabitants. The three sections provide for the method of advertisement for bids on supplies used in the following year. Section 2108 also defined what supplies consist of.

In your request you have mentioned the sheriff along with the county clerk and other different county officers. The sheriff under section 8526 R. S. Missouri, 1929, has been given custody and the keeping and charge of the jail within his county. Under this section the sheriff is empowered to purchase necessary supplies for use in the jail. It was so held in the case of Kansas City Sanitary Company v. Laclede County, 269 S. W. 395, at page 398, where the court stated.

"Under section 12549 the jail is required to be kept in good and sufficient condition and under section 12551 the sheriff has the custody, keeping and charge of the jail. He, therefore, has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition,

which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. Harkreader v. Vernon County, 216 Mo. 696; 116 S. W. 523."

The sections referred to are the same sections as sections 8524 and 8526 R. S. Missouri, 1929.

"It is not doubted that the statutes (Secs. 1571 and 1573 R. S. 1909) and the construction thereof by this court in a case to an extent analogous (Harkreader v. Vernon County, 216 Mo. 696) furnish authority to a sheriff of a county to purchase such articles and supplies as are requisite and necessary to keep and maintain the county jail 'in good and sufficient condition and repair.' But such authority absent an order of the county court, which might pro hac vice make him its agent, would not extend to purchases made for the poor house or the poor farm, the custody and control of which are vested by statute in the county court, and not in the sheriff. Likewise the county court is by statute vested with the control of the court house (Sec. 4081 R. S. 1909) and while it is made the duty of the sheriff to furnish fuel, stationery and other things more necessary for the use of the court (Sec. 3887, R. S. 1909), this duty is delimited by the appended provision directing performance thereof whenever ordered by the court. This latter conditional duty is disassociated from control of the premises and is a general one which the sheriff owes to the circuit court, to the probate court, and even to the county court itself, though the latter court is the general statutory contracting, auditing and fiscal agency of the county. Clearly, such an order should either be express, or plainly implied from

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the necessities of the situation."

Sections 4081 and 3887, Revised Statutes of Missouri, 1909, referred to in the above quotation, are substantially sections 2078 and 1870, Revised Statutes of Missouri, 1929, respectively.

CONCLUSION.

In view of the above authorities, it is the opinion of this department that the county court of Platte County cannot designate a purchasing agent to purchase supplies for the county of Platte, and that such purchases must be made by the county court for each county office, except that of the sheriff who has the authority to purchase supplies for the county jail only, and not the court house. In order for the sheriff to purchase supplies for the county court house, or circuit court rooms, the order must be approved by the county court itself, but no approval is necessary for the purchase by the sheriff of supplies for the jail, such as soaps, disinfectants etc. It appears by the above authorities that the sheriff is a partial exception to the general rule that the county court is the financial agent of the county in the purchase of supplies.

Respectfully submitted,

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APPROVED:

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