

COUNTY COURT: May not sponsor a project to build for an association an engine house to be located in an unincorporated area of St. Louis County, Missouri.

August 17, 1940

H. W. J. ROTT  
County Court of  
St. Louis County  
Clayton, Missouri



Gentlemen:

We are in receipt of your letter of August 14th, wherein you state as follows:

"The Community Fire Department of St. Louis County has made a request to the Court that it act as sponsors of a project to build for the Community Fire Department a new engine house to be located in an unincorporated area of St. Louis County, Missouri. The Community Fire Department was incorporated in the May Term of the St. Louis County Circuit Court, 1927, Division #1, #60456. It is now operating under a Pro Forma Decree by virtue of such Court action. It is a non-profitable organization whose members receive no compensation, dividends or salary, and it derives its support from assessments in the sum of Two Dollars for each member of the organization. At this time the Department is serving a district comprising 6000 homes. For this fee the Community Fire Department renders a very efficient fire fighting service and also the use of its inhalator.

"Since the date of its incorporation it has grown and progressed and today the Community Fire Department owns about \$25,000.00 worth of personal and real property.

"Various officers of St. Louis County have called upon the Community Fire Department, to render services such as flushing stagnate sewers, pumping out polluted wells and cisterns and for the use of the inhalator, which has saved many

August 17, 1940.

lives for the citizens of St. Louis County in recent years.

"We feel that this is a very worth while project and we would be willing to sponsor the building of a new engine house, and our County Counselor has so given the consent of this Court to the St. Louis W.P.A. Office. However, they have countered with the proposition that they do not believe the County Court has the necessary authority to act as a Sponsor.

"Therefore, we would be pleased to have the opinion of your office regarding our legal authority in this matter.

"The Community Fire Department is ready and willing to put its proportionate share of the costs in escrow with this Court or any bank we might choose. If we can be of any assistance to you we will be glad to do whatever is within our power."

It is well established that a county "possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments," and that "powers not conferred are just as plainly prohibited as though expressly forbidden \* \* \*" 20 C. J. S. Sec. 49, P. 802, 803.

We have made a careful search of our Constitution and statutes, and find that counties are authorized to provide court houses, hospitals and jails, but we are unable to find any authority granted them to provide fire protection within its territorial confines, or to supervise, or order same to be provided.

In 20 C. J. S. Sec. 50, p. 804, we find the following statement: "In the absence of authority conferred by law, counties have no power to construct, operate, or maintain public improvements."

County Court of  
St. Louis County.

- 3 -

August 17, 1940.

It is true that "in some states the constitutions confer on counties' the right to make and enforce police regulations not conflicting with general laws" (20 C. J. S. Sec. 49, p. 803) that might be construed to authorize counties to provide fire protection, including the construction of buildings to house the equipment, but such authority has not been granted in this State.

We note that the "Community Fire Department is ready and willing to put its proportionate share of costs in escrow" so that the county court could not be charged with lending its credit to an association in contravention of Sec. 47 of Article 4 of the Missouri Constitution. However, in view of the absence of constitutional and statutory authority of the county to provide for fire equipment or its housing we are of the opinion that the county court does not have the necessary authority to act as sponsor of a W.P.A. project to build for the Community Fire Department a new engine house to be located in an unincorporated area of St. Louis County, Missouri.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General.

APPROVED:

COVELL R. HEWITT  
(Acting) Attorney General.

MW/me