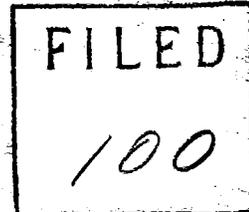


COUNTIES: Contract of insurance on buildings and county property for more than one year is void.

July 22, 1941

Hon. H. Parker York
Prosecuting Attorney
Schuyler County
Lancaster, Missouri



Dear Mr. York:

This department is in receipt of your letter of July 14th, 1941, wherein you propound the following question:

"Our county court recently came to the conclusion that the county property (courthouse) was under-insured and decided to increase the fire and wind coverage to an adequate amount. The court has always written the insurance on a five year basis since a saving in premium is made possible by term coverage. This situation however, presents itself: To properly cover the county property on a five year basis would necessitate the expenditure of more money than the county now has on hand. The insurance companies are willing to finance the premium and allow the county to make installment payments through the five year period. They inform us that approximately half of the counties in the state have followed this plan. But it occurs to me that for the county to so obligate itself would conflict with section 12 of article 10 of our constitution since the county might be anticipating revenue to be collected in future years. * * * * * Now the point is this, can our county court obligate the county as above men-

tioned for insurance and as was done by the county court of Linn county in the case of Walker vs. Linn Co. supra?"

You appear to have made some research on the question yourself, which is commendable and of aid to this department.

In our examination of the decision of Walker vs. Linn County, 72 Mo. 650, we have come to the conclusion that it does not bear directly upon the question presented in your request. In reality the question involved is the power of the county court to contract for insurance for county buildings and property. The decision holds that the county court has such power as it is incidental to the authority of the county court to preserve buildings which are the property of the county. The decision does not go into the question of obligating the county on a contract for future years. We have heretofore relied on the decision of Trask v. Livingston County, 210 Mo. 582, as more or less the controlling authority to the effect that the county cannot bind by contract the revenue for future years. The Trask decision is reviewed, along with other prior decisions, in the case of Ebert v. Jackson County, 70 S. W. (2d) 918. In that decision the question of the power of the county court to execute a lease for four years for a justice court-room was involved. After considering all the cases Judge Gantt states as follows, at l. c. 920:

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional promise made by the county on July 18,

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1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose.

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the contract became effective. It created a debt within the meaning of said section of the Constitution, and is void."

We do not believe there is any conflict between the Ebert case and the decision of Tate vs. School District, 23 S. W. (2nd) 1013, for the reason that the court held in the school district case that the contract for the employment of a teacher made in December for an eight months' term to begin in August was wholly executory and contingent. While, in the instant case we are of the opinion that the contract of insurance as outlined in your request is not executory and contingent. It binds the county for a definite period of time and is not contingent upon any happening.

We realize that many counties enter contracts of insurance for more than one year, chiefly for the reason that it lessens the amount of the premiums each year and must be considered to be economical and good business on the part of the county court, and, in addition, the insurance company thereby binds the county to that particular company for a period of years. However, irrespective of this phase, we think the Ebert case is controlling and the contract for more than one year of such insurance is void.

Respectfully submitted,

APPROVED:

OLLIVER W. NOLEN
Assistant Attorney-General

VANE C. THURLO
(Acting) Attorney-General

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