

COUNTY COURTS:

Whenever two judges of a **County Court** concur in the payment of a claim against the County, it is the duty of the Presiding Judge of said Court to sign the warrant for the payment of said claim.

October 1, 1942

Hon. A. T. Faucett
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Sir:

This is to acknowledge your letter of recent date requesting an opinion from this department reading as follows:

"I am writing you for an opinion regarding a sterilizer, bought by our County Hospital from The American Sterilizer Company at Erie, Pennsylvania.

"It seems that the Board of Trustees, of our County Hospital, took the matter up with our County Court in regard to buying a sterilizer for the Hospital. And the Hospital authorities were advised by the County Court, so I understand, that if they thought the Hospital should have the sterilizer, they should go on and buy it, which they did.

"It was shipped to the Hospital on February 7, 1942, and I am sending you a copy of the contract. However, the contract and notes described therein, were never properly signed and the \$401.00, cash payment was never paid.

"The Sterilizer Company is now threatening to take the sterilizer out of the Hospital.

"Two of the County Court Judges are willing to pay for the sterilizer, but the Presiding Judge of the County Court refuses to sign the warrant for the first payment.

"I might also say that the Hospital is now in the red and has no money on hand, but two of

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the Judges are willing to make these payments out of, what they call, an incidental fund which is really the general revenue fund, and they now have in this fund about \$6000,00 which is used for emergency purposes. They have raised the taxes for next year, to obtain additional revenue for the Hospital and I think this additional revenue will take care of all the Hospital needs.

"I should like to have your opinion as to whether or not there would be any way to compel the Presiding Judge to sign this warrant or pay for the sterilizer in any other manner."

From an analysis of the facts presented by your request, we conclude that the only question before you for determination is whether the Presiding Judge of the County Court may be compelled to sign a warrant for the payment of a claim which has been duly allowed by said Court. In this respect, we assume that the sterilizer to which you refer has been purchased in accordance with law, and that there is sufficient money in the general revenue fund of the County.

Your attention is directed to the provisions of Section 13831 of R. S. Mo., 1939, which provides in part as follows:

"When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was incurred for which the same was issued,
* * * * *

Attention is further directed to the provisions of Section 13832 of R. S. Mo., 1939, which provides in part as follows:

"Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament. It shall be signed by the president of the court whilst the court is in session, attested by the clerk, * * * *" (Under-scoring ours.)

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The provisions of these statutes are clear, unambiguous, and no room for the construction of the same exists. Cummins v. Public Service Company, 66 S. W. (2d) 290. Moreover, under the provisions of Section 13832 supra, it is clear that whenever a warrant shall be drawn for an amount ascertained to be due to a person that it is mandatory on the part of the president of the court, while the court is in session, to sign such warrant. The signing of a warrant is merely ministerial, and does not require the exercise of any discretion. That this interpretation is correct is supported by the use of the word "shall" appearing in said section. Furthermore, if the president of the court refuses to sign the warrant, he may be prosecuted under the provisions of Section 13843 of R. S. Mo., 1939.

We are enclosing a copy of an opinion dated April 14, 1941, directed to Mark Wilson, Prosecuting Attorney, with respect to what action may be maintained against the president of a township board who refused to sign a warrant for a payment on a rock crusher when two members of the township board approved the payment, which opinion, we think, by analogy is here applicable, insofar as bringing about the result of having a warrant duly signed as required by the provisions of Section 13832, supra.

CONCLUSION.

It is the opinion of this department that the Presiding Judge of the County Court is required to sign a warrant for the payment of an amount ascertained to be due by the County Court under the provisions of Section 13832, supra, whether or not such Judge concurs in the payment of the amount which has been ascertained to be due. In the event the Presiding Judge fails to perform the duty enjoined upon him by statute he may be prosecuted. Other appropriate action in the form of mandamus may be used in compelling the performance of a duty which is clearly ministerial in nature.

Respectfully submitted

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APPROVED:

ROY MCKITTRICK
Attorney General
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