

RECORDER OF DEEDS: The Recorder of Deeds, subject to the
OFFICE SUPPLIES: provisions of the Budget Act, may purchase
supplies necessary to keep and maintain
his office.

February 6, 1943

Miss Floyd Wilson
Recorder of Deeds
Jefferson County
Hillsboro, Missouri



Dear Miss Wilson:

This is in reply to yours of recent date wherein you submit the following statement of facts and request:

"Will you please interpret Section #13186 regarding the purchases of supplies for the Recorder's office. Also give me a ruling on Section #13187 with reference to hire of deputies, and who determines the number to be employed and has the power of setting the salaries to be paid for such deputy hire.

"In the past, this office has always purchased its own supplies, after presenting a Budget to the Court and having same approved. I have also employed the deputy and assistants, as the work in the office would warrant. In the past I have had two girls in the office, steady, and called an extra clerk when needed. Now, I am meeting with a new County Court and I understand they are to reverse this policy and I want advice from you, as to what Section of the Law they will act on and on what Section I can make my stand."

On the question of your duties relating to deputies and retention of fees, I think this department has answered

that question by two opinions, a copy of each we are enclosing for your information, one to Hon. C. G. Vogt, Prosecuting Attorney of Nodaway County, Maryville, Missouri, under date of March 25, 1939, and the other to Hon. Walter G. Stillwell, Prosecuting Attorney, Marion County, Hannibal, Missouri, under date of September 17, 1936.

On the question of the purchase of supplies for your office, we find the following sections which are pertinent to your duties and the county court's duties in connection therewith.

First, we call your attention to Section 36 of Article VI of the Constitution of Missouri. This section authorizes the county courts to transact all county and such other business as may be prescribed by law. Section 2480, R. S. Mo. 1939, which is an enabling act to this section of the Constitution, 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."

Referring to the office of recorder of deeds we find that Section 13147, R. S. Mo. 1939, provides as follows:

"There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, 'The office of the Recorder of Deeds.'"

Also, Section 13148, referring to the same subject, reads as follows:

"The recorder shall keep his office at the seat of justice, and the county court shall provide the same with suitable books, in which the recorder shall record all instruments of writing authorized and required to be recorded. If there is no courthouse or other suitable county building at the seat of justice, the county court shall provide an office for the recorder at any other place in the county where there is a courthouse and courts of record are held."

Under Section 13148, supra, it is provided that the recorder shall keep his office at the county seat and the county court shall provide the office with suitable books in which to record instruments of writing authorized and required to be recorded.

Under Section 13186, R. S. Mo. 1939, the lawmakers made it the duty of the county to audit and settle the accounts of the recorder for books purchased for the use of his office and allow, in their discretion, such sum as may be reasonable to be paid out of the county treasury.

The County Budget Act has been passed since the foregoing sections became the law, but we do not find anything in the County Budget Act which would take away any of the authority vested in the recorder of deeds or the county court with respect to the purchase of supplies and paying for same for that office. However, all expenditures are subject to the provisions of the Budget Act to the extent that the officer may not spend in excess of the amount set out under the Budget Act for his office.

A question similar to yours was before the court in *Ewing v. Vernon Co.*, 216 Mo. 681. In that case the recorder had employed a janitor and paid for the same and then presented his bill to the county court for the amount so paid. In that opinion Judge Lamm, the writer of the opinion, said at l. c. 689:

"It is believed that the fundamental constitutional maxims to the effect that all

government is instituted solely for the good of the whole people, is intended to promote the general welfare, and that private property shall not be taken or damaged for public use without just compensation, aided by a common sense construction of statutes evidencing a liberal and wise public policy as over against a narrow, cheese-paring one, have caused a public janitor service paid out of the common purse to be so long and universally used in public buildings and all public offices of cities and counties in Missouri, that the precise point has not hitherto come up for decision. The absence of such cases is of some significance; for a practical administrative policy worked out by the good sense of the thing, well known and uniformly acquiesced in, is not without force in construing our statutes. Show me, said a great judge, what has been done under a deed, and I will show you what the deed means. By the same token, show me what by the consensus of public official interpretation has been done under a statute, and I will show you what it probably means. * * * *"

We are quoting the foregoing principles for the reason that recorders of deeds and other officers generally have purchased the supplies for their offices and then submitted the bills to the county court for payment. So, if the above principle were applied here it would follow that the recorder of deeds would purchase the necessary supplies for his office and present the bill to the county court for payment.

Also, in *St. Louis County Court v. Ruland*, 5 Mo. 269, which was cited in the *Ewing* case, supra, the clerk of the court furnished the fuel for the use of his office. The court, in that case, held that it was the duty of the county court to pay for this fuel.

Also, in the case of *Gannon v. Lafayette County*, 79 Mo. 223, it was held that the judge of the probate court could

compel the county court to repay him the outlay for a bookcase purchased for the office of the probate judge.

In dealing directly with these statutes the court, in the Ewing case, supra, at l. c. 692, said:

"Turning to the sections of the statutes regulating the office of recorder of deeds, we find them so meager as to cry out for help by construction. Their terms, then, must be read in the light of cognate sections and of the general policy of our laws. By Revised Statutes 1899, section 9055, it is ordained that the recorder of deeds 'shall keep his office at the seat of justice in each county' and that he 'shall provide the same with suitable books;' by section 9061 it is ordained that the county court shall 'audit and settle the accounts of recorders for books for the use of their offices.' There is not a word in the chapter (chap. 147), relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons, or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; and when we read in section 9057 that the recorder of deeds must give a bond conditioned that he will deliver up to his successor among other things 'the furniture and apparatus belonging to the office, whole, safe, and undamaged,' we but gather (what we knew before) that the furniture and apparatus do not belong to the recorder, but to the county, and under Revised Statutes 1899, section 1777, are under the control and management of the county court. Turning to other cognate sections it becomes plain that unless the Legislature deliberately planned to legis-

late against recorders and in favor of other county officers (an unthinkable position), it becomes plain that the county is to furnish the necessaries in furniture, fixtures, etc., to preserve the county records and make them usable by and useful to the general public. * * * * *

Again, at l. c. 693, the court made this further observation:

"* * * Is the general public not interested in and benefited by clean windows, clean floors, clean furniture, clean spittoons, heat in winter and wholesome, healthy air at all times in public offices? It is useless to argue that question. It answers itself. And if the county court, as the agent of the general public in county affairs, without legal right or excuse, refuses to do that duty in the recorder's office, what is the recorder to do? His only sensible course is to do what this recorder did, viz., avoid an unseemly wrangle, pay it out of his own pocket and trust to the courts and the law to reimburse him. * * * * *"

In connection with this question, however, we call attention to the rule announced in Lamar Twp. v. Lamar, 261 Mo. l. c. 189:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. * * * * *"

In *Disinfecting & Mfg. Co. v. Bates County*, 273 Mo. 300, the court, referring to the *Vernon County* case, said:

"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.' * * * * *

By analogy, we may say that the recorder of deeds may purchase articles needed for his office and present the bill to the county court. Of course, the county court still retains its discretionary powers to determine what are reasonable sums to be paid for such supplies.

CONCLUSION

From the foregoing, it is the opinion of this department that the recorder of deeds, for the purpose of keeping and maintaining his office as is required by statute, subject to the limits set aside under the Budget Act for his office, may purchase necessary supplies, and that it is the duty of the county court to audit the accounts for such supplies and in its discretion to pay such sums as shall be reasonable for same.

Respectfully submitted,

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APPROVED:

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