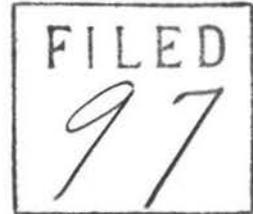


COUNTY COURT; The County Court has the authority to sell or trade the county jail.

January 6, 1944



Honorable A. L. Wilson
Associate Judge
Pettis County Court
Sedalia, Missouri

Dear Judge Wilson:

We have your letter of December 16, 1943:

"On Feb. 3rd, 1938 the county court of Pettis County traded and conveyed the county jail to certain parties for a building entirely unsuited for a jail and could in no way be made to meet the requirements of a jail as contained in the statutes.

"The building obtained by the county has been sold and conveyed.

"In conveying title to the jail the commissioner appointed by the county court of 1938 erred in making deed. An opinion of the attorney examining the abstract recites that no legal title was conveyed by the county, since the commissioner failed to affix his seal to the deed.

"Now comes the grantee asking the present county court to appoint commissioners to give him legal title to said jail.

"By what authority does a county court have to barter and sell county jails, courthouses and county homes? Would it be proper for this county court to now appoint commissioners and go through formal routine of again conveying the jail building, so that a proper deed could be given by the county to conform to the attorneys opinion?

"This information will be greatly appreciated."

Your letter indicates that there is considerable doubt in your mind concerning the wisdom or necessity for obtaining a new site for the county jail.

If circumstances arise making the jail permanently unfit for further use as a jail, or its cost of repair would amount to more than the amount required to obtain another site, or other similar situations; the county court would have the authority under Chapter 100, Article 4, R. S. Mo. 1939, to abandon the old site, repair it or purchase a new one.

Section 2480 R. S. Mo. 1939 provides:

"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."

This section gives the county court general authority to transact the business of the county. County courts are given the incidental power necessary to carry out the statutory authority granted. The court stated in the case of *Blades vs. Hawkins*, 240 Missouri 187:

"* * *While it is true the law is strict in limiting the authority of these courts, it never has been held that they have no authority except what the statutes confer in so many words. The universal doctrine is that certain incidental powers germane to the authority and duties expressly delegated, and indispensable to their performance, may be exercised."

Since this question has to do with jails and jail sites it will be necessary to examine Section 13717 R. S. Mo. 1939, which reads as follows:

"The county court of any county in this state shall have power to acquire by purchase, for such county, improved or unimproved real estate for a site for a court house, jail or poorhouse or infirmary; or,

when the county owns such site or sites, to acquire by purchase improved or unimproved real estate as an addition to or enlargement of the same; and if the county court and the owner or owners of the real estate sought to be purchased for any of said purposes cannot agree upon the compensation to be paid therefor, or if for any other reason the title thereto cannot be acquired by contract, the county court of such county may proceed, in the name and on behalf of said county, to appropriate and condemn such real estate in the manner provided by article 2 of chapter 8, R. S. 1939, and the same proceedings shall be taken as are provided in said article for the condemnation of lands for other public uses, as far as the same may be applicable."

There are no adjudicated cases in Missouri on the question of the authority of a county court to sell or trade the county jail. The county court is given the authority under this section to acquire in addition to its present site or sites, improved or unimproved, site or sites as an "addition to or enlargement of the same". Any construction must be practicable so it would seem to us that an "addition" would not necessarily mean that it would have to be contiguous to the first site as long as it was used for its intended purpose or used in connection with the first site. Several sites might be acquired if the county court in its discretion deem it advisable. The court said in the case of Security State Bank vs. Dent County, 137 S. W. (2d) 1.c. 964:

"We find nothing in the statutes requiring that real estate lawfully acquired by the county by purchase under the statutes be used immediately for the purpose for which it was acquired; nor do the statutes prevent a county court from lawfully exercising reasonable foresight for the county's future needs. Appellant presented no evidence tending to show that this lot was not needed, or would not reasonably be needed, within a reasonable time for governmental purposes." (our emphasis)

The court would have no authority to buy and sell real estate indiscriminately but would have the authority to acquire and sell within their sound decision.

Even though Section 13717 R. S. Mo. 1939, provides for acquisition by purchase, and Section 13718 R. S. Mo. 1939, provides for the payment in cash, yet the phrase "acquisition

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by purchase" includes every mode of taking title except descent or inheritance. If it proved profitable for the county court to trade the property then their action, in our opinion, would be justified.

If the county court has abused their discretion, their action may be reviewed by the courts.

CONCLUSION

The county court has authority to trade the county jail for another jail site and their authority for this and the procedure for conveyance is contained in Chapter 100, Article 4, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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Attorney-General

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