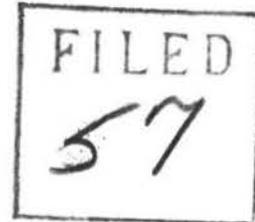


1 (S) Purchase of election supplies made by County Clerk.
TY COURT) Section 10932, R.S.A., relating to advertising for
bids inapplicable to third and fourth class counties.

August 17th, 1949

9/3/49



Honorable W. D. Mayse
Prosecuting Attorney
Harrison County
Bethany, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this office
which in part reads:

"(1) In a county such as ours, with less than 50,000 population, may the County Clerk purchase election supplies if the cost thereof is over \$500.00, without advertising for the lowest and best bid as would seem required from Sec. 10932, Revised Statutes of Missouri, 1939, which section is a part of the County Budget Law.

"(2) If the expense of the election supplies for any one election is less than \$500.00, may the County Clerk purchase them without the approval of the County Court of such contract of purchase.

"As I understand Section 11593, Revised Statutes of Missouri, 1939, election supplies are a public expense and as such it would seem to me that their cost and purchase should be governed by our County Budget Law."

As you have pointed out in your first question, Section 10932, R. S. Missouri, 1939, repealed and reenacted by Laws of Missouri, 1945, page 603, is a part of Chapter 73, Article 2, styled the County Budget Law, and containing Sections 10910-10935, inclusive. Section 10910, R.S.A., Laws of Missouri, 1945, page 610, in part

provides:

" * * * All counties of the third and fourth classes shall be governed by Sections 10910 to 10917, inclusive, of this article. * * *"

Harrison County is a county of the third class. Consequently, Section 10932, supra, relating to advertising for bids on contracts or purchases involving an expenditure of \$500.00 or more is not applicable to this class of county. This section would only apply to larger classes of counties.

The cost of elections, which would necessarily include election supplies required to conduct elections, such as ballots, cards of instruction and other supplies, must be budgeted as required by our County Budget Law. Thus, Section 10911, R. S. Missouri, 1939, providing for the classification of proposed expenditures in part reads:

"The court shall classify proposed expenditures in the following order:

* * *

"Class 2. Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this law. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1."

Section 10914, R. S. Missouri, 1939, which requires the county court to show estimated expenditures for the year by the various classes in part provides:

"The court shall show the estimated expenditures for the year by classes as follows:

* * *

"Class 2. Expense of conducting circuit court and elections, not to include the salary of any

officer or employee on a yearly salary nor deputy or assistant of any kind whatever though on irregular time, such shall be estimated for under class four. Class 2 shall include pay of jurors, witnesses if properly paid by the county, and other incidental court costs, pay of judges and clerks of elections and all other expense of elections chargeable against the county. This estimate shall not be less than last preceding even year in even years and last preceding odd year in odd numbered years."

Section 10912, R. S. Missouri, 1939, makes it the express duty of every county officer, including the county clerk, to furnish on or before January 15th of each year an itemized statement of the supplies he will require for his office. This section provides:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year and the section or sections of law under which he claims his office is entitled to the amount requested, also he shall submit an itemized statement of the supplies he will require for his office, separating those which are payable under class 4 and class 6. Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary revenue. No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished. The clerk of the county court shall prepare and file an estimate for his office;

also for the expense of the judges of the county court. If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and, appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4."

Further, in this regard, Section 10915, R. S. Missouri, 1939, provides:

"Not later than the 15th day of January of each year, every officer who expects to claim pay for services or to receive supplies to be paid for from county funds shall submit to the county clerk the information hereinafter specified. (If state funds are received or expected to be received for all or any part of the expense such shall be considered as county funds for the purpose of this request.) The estimate of each such officer shall cover the entire year beginning January first and ending December thirty-first, both dates inclusive. No pay shall be received by any officer who fails to file this estimate. If any officer's term end other than the thirty-first day of December he shall so state but shall make an estimate for the entire year, as nearly as possible, and if the county court shall be convinced that any officer whose term so expires has willfully failed or neglected to make proper request the court shall make proper estimate and shall charge the shortage to the term of the officer offending. The clerk of the county court shall prepare the estimate for the expense of the judges of the county court and shall file it together with the estimate for his own office with the consolidated budget estimate herein provided for."

Section 11593, R. S. Missouri, 1939, provides that in elections for public officers other than city officers, all ballots and cards of instruction shall be printed at the expense of the county, and reads as follows:

"All ballots cast in elections for public officers within this state shall be printed and distributed at public expense, as hereinafter provided. The printing of the ballots and of the cards of instruction for the electors in each county, and the delivery of the same to the election officers, as provided in section 11598, shall be a county charge, except where the officers to be voted for are exclusively city officers, in which case such printing and delivery shall be a city charge, the payment of which shall be provided for in the same manner as the payment of other county or city expenses."

Section 11594, R. S. Missouri, 1939, imposes the duty on the county clerk to provide ballots for every election of public officers in which electors of the county participate and in part reads:

"Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, * * *"

Section 11596, R. S. Missouri, 1939, providing for the preparation and distribution of ballots to be used in voting on a proposition or question to be submitted to the people in part reads:

"Whenever the secretary of state has duly certified to the clerk of each county any proposition or question to be submitted to a vote of the people, the clerk of the county court shall prepare and distribute ballots printed in such form as to call for a vote thereon by scratching either the word 'yes' or the word 'no,' * * *"

In the above section we observe that again the duty is imposed on the county clerk to prepare and distribute the ballots.

Section 11597, R. S. Missouri, 1939, providing for the number of ballots to be distributed within the various election districts in part reads:

"The clerk of the county court of each county or the board of election commissioners where there is such board shall provide for each election district in his county fifty-five ballots for each fifty and fraction of fifty electors registered at the time of such election. If there is no registration of voters in the district or precinct, such clerk or such board shall provide ballots to the number of one hundred for every fifty or fraction of fifty electors who voted at the last general election in the district or precinct; * * *"

Again the statute imposes a duty on the county clerk to provide ballots.

While the cost of election supplies which would primarily be the ballots used in elections must be budgeted as required by our county budget law, the duty of preparing, furnishing and distributing the ballots is by statute imposed on the county clerk. It is one of the important duties connected with that office that must be performed by the holder thereof.

Certainly the duty imposed on the county clerk to provide and furnish ballots for elections carries with it or at least by implication invests him with the power to first acquire said ballots, and such acquisition could be made by purchase.

A somewhat analogous situation in which an officer has the right to buy supplies without obtaining authorization from the county court is that of the sheriff purchasing supplies necessary for the upkeep of the county jail.

In the case of *Kansas City Sanitary Company v. Laclede County*, 269 S.W. 395 (Sup.), the county sought to avoid payment for supplies furnished to the county at the request of the sheriff for the county jail. In holding the county liable, the court at 1.c. 398 said:

" * * * Section 9507 requires that the agent purchasing supplies for the county be lawfully authorized, and this requirement is not

done away with, even though the claim may not be defeated, because the prescribed legal steps have not been followed. No question of that sort can be successfully raised as to any part of the goods ordered for and used at the county jail. Under section 12549 the jail is required to be kept in good and sufficient condition and under section 12551 the sheriff of the county has the custody, keeping, and charge of the jail. He therefore has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition, which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. Harkreader v. Vernon County, 216 Mo. 696, 116 S. W. 523."

In the above case, the duty imposed upon the sheriff in keeping the jail in good and sufficient condition carried with it full authority to purchase all necessary supplies to perform this duty without first obtaining authorization from the county court.

Again in the case of State ex rel. Bybee v. Hackman, 207 S. W. 64, 276 Mo. 110, a mandamus proceeding was instituted against a state auditor to compel him to audit for payment an account of the relator for services rendered by him as a stenographer in taking shorthand and transcribing evidence heard by the State Board of Equalization. In issuing the writ, the court at Mo. l.c. 116 said:

"That question simply stated is this: Has the State Board of Equalization authority under the law to employ a stenographer at the expense of the State? If such Board of Equalization (hereinafter for brevity, called simply the board) has any such authority, this authority must be bottomed on some statute. * * * But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance

of such duties, effectual, is conferred by implication (Hannibal, etc., Railroad v. Marion Co., 36 Mo. 303; Walker v. Linn Co., 72 Mo. 650; Sheidley v. Lynch, 95 Mo. 487.) So much being true it is urged that since the statute which defines the duties of the board provides that it may 'take all evidence it may deem necessary,' it follows by necessary implication that a stenographer may be employed to take and transcribe the evidence which the board deems necessary to be taken. We think this contention must be sustained.
* * *

In the later case of State v. Wymore, 132 S. W. (2d) 979, 345 Mo. 169, the rule regarding the powers possessed by a public officer in performing the duties of his office was stated as follows at S. W. l.c. 987-988:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes.' 46 C.J. Sec. 301, p. 1035.

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' Throop's Public Officers, Sec. 542, p. 515."

In view of the foregoing authorities, we are constrained to the view that the statutes hereinbefore cited, which imposes on the county clerk the duty to prepare, provide and furnish the principal election supplies, i.e., the ballots, by implication invests him with the power to contract for the purchase of them without first obtaining the approval or authorization from the county court.

CONCLUSION.

Therefore, in answer to the questions submitted, it is our opinion that Section 10932, Mo. R. S. A., relating to the advertising for bids on contracts or purchases involving an expenditure of \$500.00 or more, is not applicable to counties of the third and fourth classes.

It is further our opinion that the county clerk is authorized to contract for the purchase of election supplies without first obtaining the approval or authorization from the county court.

Respectfully submitted,

APPROVED:

RICHARD F. THOMPSON
Assistant Attorney General

J. E. TAYLOR
Attorney General

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