

COUNTY COURTS:  
COURTHOUSES:  
PROBATE COURTS:  
MAGISTRATE COURTS:

County courts must furnish probate and magistrate courts adequate office and storage space, office furniture, equipment, appliances and supplies.

County courts do not have authority to lease or permit the use of space in the county courthouse for private purposes.

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FILED 20

Honorable James E. Curry  
Prosecuting Attorney  
Douglas County  
Ava, Missouri



Dear Sir:

Receipt of your letter of recent date is acknowledged, requesting an official opinion of this department on two subjects. Your letter reads as follows:

"At the request of Hon. Quentin Haden, Probate Judge of Douglas County, I am requesting an opinion from your department relative to the obligation of the County Court to provide office facilities for both the Judge and the Court.

"At the present time the office of the Probate Judge is located in a single room in the courthouse, and the records of the court are contained in open filing shelves in the same room. There is no vault available in that office, and there is no private office for the judge. At present there is inadequate space in the office for the necessary books.

"Also at the present time there is available in the courthouse an office which is accommodated by a vault and is large enough and spacious enough to take care of the court and its records. However this office is under a ten year lease granted by the county court to a private individual for private purposes.

"There is some question in the mind of the Probate Judge as to the validity of

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a long term lease to a private individual for private purposes when such office in a county courthouse, in his opinion, is necessary to carry on and conduct the business and affairs of the county and state, especially when the office of Probate Judge and Magistrate under the law of 1945 is deemed a court of record. As a court of record the Probate Judge feels that he is entitled to a vault for the safe preservation of the records of his office."

We discuss the questions presented in the order stated in your letter.

1. Section 49.130, RSMo. 1949, provides in part:

"The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county. \* \* \*"  
(Emphasis ours.)

Section 49.470, RSMo. 1949, provides as follows:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage." (Emphasis ours)

Relating to judges of magistrate courts, Laws of Missouri, 1945, p. 770, Section 6, reads:

"In counties of 30,000 inhabitants or less, the probate judge shall qualify as judge of the magistrate court and his failure or refusal to do so shall constitute a vacancy in both the office of probate judge and the office of judge of the magistrate court."

Section 19 of the same Laws provides in part that:

"Magistrate courts shall be courts of record. \* \* \*"

Section 14, 1945 Laws, p. 772, is as follows:

"Every magistrate may hold court for the trial of all causes of which he has jurisdiction as often as may be necessary to meet the needs of justice, and may hold such court on any day, except Sunday, on which any cause may be set and for trial, or any cause adjourned; and when so required the sheriff shall be present in person or by deputy and attend on said court."

Section 18 of same Laws, p. 774, with reference to the location of the magistrate courts in counties having a population such as Douglas County, provides:

"The county seat shall be the seat of the magistrate court, and the county court may, by proper order, provide an additional place or places in the county for the holding of magistrate court; provided however that in counties of the first class the county court may by proper order establish the seat of any magistrate court at some place within the county other than at the county seat."

Section 49.510, RSMo. 1949, being in force at the effective date of the Magistrate Court Act and apparently applying to any county office, reads as follows:

"It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip, said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and

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paid out of the county treasury of said county at the time and in the manner that the county court may direct." (Emphasis ours.)

The statutory provisions above quoted serve as mandates by the legislature on county courts in order to secure and insure the proper functioning of county offices and the prompt and efficient transactions of the public business committed to them by the laws of the state. The statutes as to their command are general in nature, leaving it to the sound judgment of the members of the county court, aided by the advice of affected officials, in carrying the same into effect, keeping in mind the purpose and spirit of the law in that regard.

Wills, records, files and other papers that direct or have to do with the devolution of title to real and personal property, together with the files and records concerning the administration of estates and all of the incidents thereto, are housed and kept in the offices of the probate court in the respective counties throughout the state. Records as to the institutions of civil actions and proceedings involving prosecutions for alleged violations of criminal laws of the state are kept in the offices of magistrate court. Undoubtedly, it is the duty of the county court to provide a vault, or a steel or iron safe or other similar installation, in which such records, files and papers may be preserved and protected from outside interference and damage or destruction. The foregoing may be accomplished by installations in the courthouse itself or by means of a separate structure in close proximity to the courthouse, erected for such storage and protective purposes.

It is a matter of common knowledge that certain hearings are held by the probate and magistrate courts for which juries may be called and at which witnesses are required to attend and at which interested parties have a right to be present. The county court, in determining the amount of space to be furnished the probate and magistrate courts, should have the foregoing conditions and necessities in mind, together with the space necessary for the transaction of the regular and ordinary business of such courts. Likewise, the county court should supply the probate and magistrate courts with such necessary office, furniture, appliances and equipment as will enable such courts to properly transact the business of such offices with accuracy and dispatch and to keep proper records and files of the proceedings thereof.

The arrangement of courthouses in the respective counties and available space, considering the proper needs and demands

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of other county officials, necessarily presents its own and a different problem to be solved by each county court. Within the space available in the county court house for the use of county offices or such additional space as may be legally provided by the county court, it is the duty of such court to give effect to the foregoing provisions of the law, and such court may be compelled to do so in the event of a disregard of its duties.

2. Referring to the purported lease of space in the courthouse of Douglas County to a person or persons for private purposes, we have heretofore pointed out sections of the statute law of the state giving the county court care, control and custody of courthouses and the county property therein. There is no statute in this state providing that county courts cannot lease space in the courthouses for private purposes, but such provision may be read into the law by implication.

It is a matter of common knowledge that courthouses over the state generally are now crowded for space to be used for public purposes, which excludes any thought that it was the intention of the legislature that courthouses are to be used for purposes other than those in which the public as such generally has an interest.

The rule in this respect is stated in Sparks v. Purdy et al, 11 Mo. 219. The Supreme Court of this state at page 224 of the opinion stated:

"The law intrusts the County Court with the control and management of the property, real and personal of the county; and under this power the court superintends the public buidings. Public convenience requires that a summary power to prevent the illegal occupation of, and to eject trespassers from the places designed for the transaction of the business of the county should exist in some body."

The Supreme Court of Missouri in 1923 in the case of King v. Maries County, 293 Mo. 488, 249 S.W. 418, defined the powers of the county courts as follows:

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They

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have only such authority as is expressly granted them by statute."

The general rule governing the authority to rent public property for private use is stated in 63 A.L.R. 614, as follows:

"It seems to be universally recognized that municipal corporations can exercise no powers which are not in express terms, or by fair and reasonable intendment, conferred upon them, and hence such corporations have no power to rent municipal property to private persons, in the absence of a charter provision or statutory enactment empowering them to do so either in express terms or by necessary intendment."

This principle is also stated in State ex rel. Scott v. Hart, 144 Ind. 107. In the course of that opinion the court said:

"The board of commissioners is authorized to purchase and own the real estate upon which the court house is erected, for that purpose, which is a public purpose, and has no power to use or lease the same or any part thereof to be used for any private purpose, unless there is a statute giving such power. The court house is erected for the public use, to furnish a place to hold the courts, and for officers for the clerk, sheriff, treasurer and auditor, and for such other public purposes as may be necessary."

We think the lease referred to in your letter was void ab initio and the county court should exercise its duty to secure that part of the courthouse so occupied under the lease for the public uses for which it was intended. In the event it becomes necessary to take drastic action in order to procure possession of that part of the courthouse occupied under such lease, it will doubtless be the safer procedure to give the lessee or lessees thirty days notice to vacate such space. Such notice should be issued on an order of record made by the county court, particularly describing the space so occupied and the notice to vacate signed by the presiding judge, he to be authorized to sign same by the aforesaid order.

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CONCLUSION

It is the opinion of the Attorney General:

1. (a) That it is the duty of the respective county courts of the state to furnish probate and magistrate courts the specific space in the courthouse or elsewhere for the proper transaction of their business, and to furnish such courts adequate storage installations for their books, records and files, and further to furnish such courts necessary furniture, equipment, appliances and supplies for the efficient transaction of their business with reasonable dispatch. And, further, that action of county courts may be compelled in the above respects.

(b) That business coming before probate or magistrate courts is of a public nature and should be transacted as such. A private office for a probate judge or magistrate would doubtless be proper where conditions justify it, but we do not regard the same as a necessity.

2. That county courts in this state do not have authority to lease or permit the space in the county courthouse to be used for private purposes.

Respectfully submitted,

GILBERT LAMB  
Assistant Attorney General

APPROVED:

J.E. TAYLOR  
Attorney General of Missouri