

COUNTY COURTS: County Court cannot pay hospital and doctor bill of injured employee from public funds. Whether such employee may receive salary while hospitalized is matter within discretion of County Court. Unused balance of special fund, purpose for which raised having been accomplished, may be transferred to General Revenue Fund, or such other fund as may be in need of such fund.



April 25, 1953

Honorable Roderic R. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Mr. Ashby:

In your letter of April 7, 1953, you requested an official opinion of this office as follows:

"In 1952 A County had a DDT Spray program. B was employed to spray by A County. B, while so employed was seriously injured. Frankly the County Court of A County is desirous of paying B's doctor and hospital bills. A County has \$500.00 left in the DDT Spray fund.

"Would it be possible to use this \$500.00 to pay B's hospital and doctor bill or,

"Would it be possible to use this \$500.00 to pay B a salary while he was hospitalized, or,

"In case this \$500.00 cannot be used in either way above, what should this \$500.00 be transferred to?"

A County Court is not the general agent of either the county or the state, and as such, has only those powers expressly granted to them and such implied powers as are necessary to effectuate the express authority given to them. The Supreme Court of Missouri in King vs. Maries County, 249 S.W. 418, 292 Mo. 488, 1.c. 420, expressed the powers of the County Court 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. Butler v. Sullivan County, 108 Mo. 630, 18 S.W. 1142; Sturgeon v. Hampton, 88 Mo. 203; Bayless v. Gibbs, 251 Mo. 492, 158 S.W. 590; Steines v. Franklin County, 48 Mo. 167, 8 Am. Rep. 87. This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. Sheidley v. Lynch, 95 Mo. 487, 8 S.W. 434; Walker v. Linn County, 72 Mo. 650; State ex rel. Bybee v. Hackmann, 276 Mo. 110, 207 S.W. 64."

(Underscoring ours.)

After diligent search we have been unable to locate any statute authorizing payment from public funds of hospital or doctor bills of injured employees of a county.

Your second question, as to whether an injured employee may receive a salary while hospitalized, is one which cannot be answered specifically on the facts which you gave us. The County Court has, of course, certain discretion to determine, in the absence of statutory provision otherwise, the salary of employees which it is authorized to hire. Within such discretion it can determine the amount of salary and the length of employment. To be considered by the Court is the length of time which an employee is unable to perform the services for which he is hired, whether such employment is a continuing one or is for only a special purpose, the feasibility of hiring a new employee to perform the services for which the injured employee was hired to perform, and the desirability of retaining an experienced employee, even though he may be temporarily absent from his work.

However, the Court should be exceedingly cautious not to authorize a mere gratuity to an injured employee under the guise of paying him a salary.

The Legislature has seen fit to prescribe severe criminal penalties for County Courts who wrongfully disburse public funds as follows:

"558.250. Claims corruptly allowed by county courts and other officers.--Any

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member of the county court, common council or board of trustees, or officer or agent of any county, city, town, village, school township, school district, or other municipal corporation, who shall, in his official capacity, willfully or corruptly vote for, assent to or report in favor of, or allow or certify for allowance, any claim or demand, or any part thereof, against the county, city, town, village, school township, school district or other municipal corporation, of which he is such officer or agent, or against the county court, common council or board of trustees of which he is a member--such claim or demand, or part thereof, being for or on account of any contract or demand or service not authorized or made as provided or required by law--every such person so offending shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, or by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months, or by both such fine and imprisonment."

"558.260. Fraudulent disbursement of money.--If any member of any town or city council, or of any county court or commission or body charged with the administration or management of the affairs of any county, or any executive officer or member of any executive department of any city, town or county in this state, or any member of any board or commission charged with the administration or management of any charity or fund of a public nature, by whatever name the same may be called, shall knowingly and without authority of law vote for the appropriation, disposition or disbursement of any money or property belonging to any such city, town, county, charity or fund, or any subdivision of any such city, town or county, to any use or purpose other than the specific use or purpose for

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which the same was devised, appropriated and collected, or authorized to be collected by law, or shall knowingly aid, advise or promote the appropriation, disbursement or disposition of any such money or property, for any purpose not directed and warranted by law, and such illegal appropriation, disbursement or disposition be in fact effected, every person so offending against the provisions of this section shall be deemed and taken to have feloniously embezzled and converted to his own use such money or property; but if the same be not effected, then such person so voting, advising or promoting the said illegal appropriation, disbursement or disposition of said money or property, as aforesaid, shall be deemed and taken to have feloniously attempted to embezzle and convert the same to his own use, and, upon conviction of either or any such offense, shall be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months, or by a fine not exceeding fourfold the value of such money or property; provided, however, that in any case when any money has been or shall have been collected by any city, town or county for any specific use or purpose, and it is or shall have become impossible to use such money for that specific purpose, either by reason of the abandonment or failure of such use or purpose, or the satisfaction of such use or purpose, then the members of any such town or city council, and the proper officers of such city, town, county or board herein mentioned, may appropriate such money to any other legitimate use or purpose without becoming liable to any of the aforesaid penalties."

The Supreme Court of Missouri in State ex rel. Heaven, Relator, vs. Ziegenhein, et al., 45 S.W. 1099, 44 Mo. 283, l.c. 291, in denying a pension to a retiring St. Louis policeman, made this comment on remuneration to public employees for past services:

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"The courts should not search for plausible reasons and specious pretexts to evade and set aside constitutional prohibitions against the improper use of public funds, and thereby unnecessarily increase the burdens of taxation. Upon the contrary, all such provisions in the organic law of the State should be enforced and made effectual according to their plain meaning and intent.

"We are not unmindful of the important services rendered by the officers of the police force and of the benefits derived from their faithfulness in protecting and guarding the lives and property of the citizens. They are officers of the State, however, and the Constitution has declared, that, like all others holding official stations, they must rest content with the remuneration fixed by law, and after their services have been performed, no matter how valuable they may have been, the city can not, as a gratuity or pension, 'grant public money to or in aid of any individual,' and the courts have no power to require it to be done. * * *."

The Legislature has made provision for the disbursement of the balance of any special fund which is no longer needed for the purpose for which it was raised, by Section 50.020, RSMo 1949:

"50.020. Transfer of county funds.--Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

This section indicates that the excess funds to which you refer, may be transferred to the General Revenue Fund of the county, or any other such fund as may be in need of such balance.

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CONCLUSION

It is, therefore, the opinion of this office that:

- 1) A County Court cannot use public funds to pay hospital or doctor bills of an injured county employee;
- 2) Whether such injured employee may receive salary while hospitalized must be determined by the County Court on the particular facts of each case, and,
- 3) An unneeded balance in any special fund may be transferred to the General Revenue Fund of the county, or any other fund in need of such balance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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