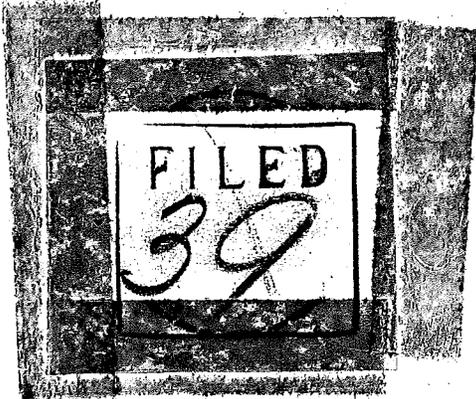


COUNTY COURTS: No authority to hold persons writing libelous articles in newspapers concerning the county court and its members, in contempt of court.



April 26, 1954

Honorable Rex A. Henson  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Mr. Henson:

This will acknowledge receipt of your request for an opinion, which reads:

"The Presiding Judge of the County Court of this county has requested that I write you for an opinion as to the authority the County Court has to order a person or persons held for contempt of court.

"The local newspaper has printed some articles concerning the Court and its members which the members of the Court consider as libelous and they want an opinion from you as to the authority they might have in holding the person or persons who wrote the article in contempt of Court.

"Your assistance in this matter will be greatly appreciated."

County courts are created in this State by virtue of Section 7, Article VI, Constitution of Missouri and Sections 49.010 and 020, RSMo 1949. The general rule is that such courts have only authority and power as may be vested in them by the Constitution and laws of this State. In *Jensen v. Wilson TP.*, Gentry County, 145 SW2d 372, 1.c. 374, the court said:

"\* \* \* A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it

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must pursue its authority and act within the scope of its powers. State ex rel. Quincy, etc., Ry. Co. v. Harris, 96 Mo. 29, 8 S.W. 794.

A careful search of the statutes fails to disclose wherein the county court is specifically given authority to bring contempt proceedings. It may be possible that the General Assembly has not realized that since the county court is no longer a court of record as declared by the appellate court in this state, that it is no longer vested with statutory authority or any implied authority to hold anyone in contempt of court as provided for courts of record.

In Rippeto v. Thompson, 216 SW2d, 505, l.c. 508, it was held that county courts under the Constitution of Missouri 1945, are no longer vested with judicial power, are not courts of record, and not courts of law but merely ministerial bodies managing the county's business. Likewise, In re City of Kinlock, 242 SW2d 59, l.c. 62, the court again held that county courts are no longer courts of record; are not vested with judicial power.

Section 476.110 RSMo 1949, specifically provides that certain acts constitute contempt of court but only in a court of record. While we find no statutory authority for a county court holding anyone in contempt of court, the Legislature has made certain acts committed in such courts a misdemeanor. Under Section 50.160 RSMo 1949, the county court is required to audit, adjust and settle all accounts to which the county is a party. Furthermore, under this statute, the court may issue process for necessary parties and said statute makes it a misdemeanor for such persons failing to appear, refusing to answer questions, produce papers or refuse to be sworn. Said statute does at least aid to prevent certain abuses to the court. Furthermore, Section 49.210 RSMo 1949, vests in said court further authority to award process for all necessary persons, place them under oath or affirmation and examine them as to any controversy.

There is considerable authority for courts having inherent power to carry out statutory duties and provides that they may go so far as to hold one in contempt of court for interfering with the business of the court; however, all such authority seems to be vested only in courts of record and in judicial proceedings. See People v. Schwarz, 248 Pac. 990, l.c. 993; Osborn v. Pardome, 244 SW(2d) 1005, l.c. 1012; Zeitinger v. Mitchell, 244 SW(2d) 91, l.c. 97.

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Finding no statutory authority for county courts holding anyone in contempt of court, the question is now presented whether county courts may have such power by reason of the common law. Under Section 1.010 RSMo 1949, the common law in force prior to the fourth year of the reign of James the 1st is still in force in this State so long as it is not in conflict with the Constitution of the United States, the State or any State law. However, Section 46, page 61, Vol. 17, C.J.S. lays down the general principle that the common law power to punish for contempt is only vested in courts of record.

In view of the fact that county courts are no longer courts of record and have no judicial authority, in the absence of any statutory authority for such county courts to hold such persons in contempt of court, we believe that such courts are without any authority to hold anyone in contempt of court.

#### CONCLUSION

Therefore, it is the opinion of this department that county courts, no longer being courts of record, are no longer vested with authority to hold persons in contempt of court and it follows that the county court cannot hold such persons who wrote the articles in question in contempt of court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

ARH:sm