

PROSECUTING ATTORNEY:
COUNTY COURT:

Prosecuting Attorney may recommend compromise of claims against county; county court may effectuate a compromise of claims subject to valid dispute.



January 11, 1954

Mr. John E. Mills
Prosecuting Attorney
Ralls County
New London, Missouri

Dear Sir:

Reference is made to your request for an opinion of this office. You first refer to Section 56.070, RSMo 1949, relating to the duties of the prosecuting attorney to investigate all claims against the county and inquire:

"1. Is it your opinion that this duty carries with it the implied obligation, that following such investigation, the prosecuting attorney may recommend that the claims be compromised and settled?

"2. If it appears from the evidence that a valid dispute or question of the validity of the claims exists, may the present county court enter into a binding agreement or contract of settlement which would stand in the place of the original contract or agreement and be effective as a contractual obligation incurred by the present court during 1953."

Section 56.070, RSMo. 1949, provides as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested,

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and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before the magistrate courts, when the state is made a party thereto; provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

While this section does not expressly authorize the prosecuting attorney to recommend that claims be compromised and settled, we are of the opinion that such authorization is granted by implication and we so hold. The general rule in this regard is stated in the case of *State ex inf. McKittrick v. Wymore*, 345 Mo. 169, 132 S.W. 2d. 979, 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.

"Necessary implications and intendments from

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the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication, ' * * *'

It would be a purposeless thing to require the prosecuting attorney to investigate claims against the county if the county which he represents could not have the benefit of his legal knowledge and training in regard to whether the claim should be defended against in a proper judicial proceeding or compromised and settled at less expense to the county.

You next inquire whether the county court may compromise and enter into a contract of settlement of a claim which is the subject of a valid dispute. In answer to this question, we refer you to the case of St. Louis I.M. & S. Railway Company vs. Anthony, 73 Mo. 431. While in this case the state was the initiating party, we believe that the reasoning there applied would likewise be applicable in a case where a claim is sought to be enforced against the county. In its opinion, the court said at l.c. 434:

"It is now contended that the county had no authority to make the compromise in question, or any compromise whatever. We are not of that opinion. The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes were levied for the benefit of the county. The beneficial interest was in the county, and it is for the public interest that she should have the right to settle, by compromise, questionable demands which she may assert. Must the county prosecute doubtful claims at all hazards, regardless of costs and expenses, and is it for the public good that the right to settle such demands by compromise be denied her? As was said by the supreme court of

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New York in the case of the Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation, it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawal or by agreement with its adversary.' The same doctrine was sanctioned in the Supervisors of Chenango County v. Birdsall, 4 Wend. 453."

See also 20 C.J.S., Counties, Section 303, p. 1261:

"Where the necessary elements are present, claims against the county are subject to compromise * *.

"The settlement of a disputed claim against a county has been held to operate as a liquidation of such claim, in the manner of a judgment in case of litigation, and not to create a new obligation * * *."

That the county court is the proper body to effectuate such a compromise see Article 6, Section 7 in the Constitution of Missouri vesting the county court with the authority to manage all county business as prescribed by law and Section 50.160 RSMo. 1949, granting to the county court the power to audit, adjust and settle all claims to which the county should be a party.

The foregoing propositions would, we believe, be controlling on the questions presented and would be applied to a controversy considering therewith all of the attendant facts of the particular case, a matter which we do not undertake in this opinion.

CONCLUSION

Therefore, it is the opinion of this office that the duties conferred upon the prosecuting attorney by Section 56.070, RSMo. 1949, to investigate claims against the county carries with it the authority to recommend a compromise and settlement of such claims if the best interests of the county are served thereby.

We are further of the opinion that the county court may enter

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into a contract of settlement of a claim against the county which is the subject of a valid dispute.

This opinion, which I hereby approve, was written by my assistant, Mr. Donal D. Guffey.

Yours very truly,

JOHN M. DALTON
Attorney General