

COUNTY COURT: In keeping record of proceedings of county court, county clerk should obey direction
COUNTY CLERK: of majority of court.



July 15, 1955

Honorable William T. Bellamy, Jr.
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Bellamy:

This is in response to your request for opinion dated June 25, 1955, which reads as follows:

"The Presiding Judge of our County Court has propounded to me a problem which I am at a loss to answer. I would sincerely appreciate an opinion from you at your earliest convenience on the general question as to whom determines the items included in the record of proceedings kept by the County Court.

"In this particular case, the Presiding Judge desires certain things included in the record of proceedings of the County Court which the County Clerk and the other two Judges do not desire included. In this connection I should like to direct your attention to Article VI, No. 7 of the Constitution of 1945 which merely provides that a county court shall 'keep an accurate record of its proceedings.' I should also like to direct your attention to Section 51.120 of the Revised Statutes of Missouri for 1949 which directs that this accurate record shall be kept by the County Clerk. In this connection you may also find helpful State ex rel Caldwell vs. Cockerell, 280 Mo. 269 and State ex rel Attorney General vs. Hickson, 41 Mo. 210.

"It would seem clear to me that whenever two judges of the County Court desire something included in the records, that the County

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Clerk would have no other alternative than to record it as they directed. However, where only one judge of the County Court desires something included, I am definitely in need of advice. It would seem to me that, for example, a Presiding Judge who is required to sign county warrants would have the authority to get the fact that a warrant was issued by authority of the court into the court record."

Although since the adoption of the 1945 Constitution county courts are no longer courts of record in the juridical sense (Rippeto v. Thompson, 358 Mo. 721, 216 S.W. (2d) 505; State ex rel. Kowats v. Arnold, 356 Mo. 661, 204 S.W. (2d) 254; Bradford v. Phelps County, Mo., 210 S.W. (2d) 996), they are nevertheless still required to keep records of their proceedings.

Section 7, Article VI, Constitution of Missouri, 1945, reads as follows:

"In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

By Section 51.120, RSMo 1949, the county clerk is required to keep these records. That section reads, in part, as follows:

"Every clerk of a county court shall keep an accurate record of the orders, rules, and proceedings of the county court, and shall make a complete alphabetical index thereto; * * *"

With regard to this duty of the clerk, the Supreme Court of Missouri, in the case of State ex rel. Attorney-General v. Bowen, 41 Mo. 217, 219, said:

" * * * The office of the clerk of the County Court is essentially ministerial in its character. So far as the entry of the orders of the court are concerned, or

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the performance of any other act or thing which may be legally and properly required of him by the court, he is without discretion; he has no power to judge of the matter to be done, and must obey the mandates of the tribunal whose officer and servant he is. * * *

Although in certain instances the county clerk would be justified in relying upon orders from the presiding judge alone (Boggs v. Caldwell County, 28 Mo. 586), as a basic proposition the court must act as a body legally assembled (Sec. 49.070, RSMo, Cum. Supp. 1953; 15 C.J., Counties, Sec. 107, page 459; Missouri-Kansas Chemical Company v. Christian County, 352 Mo. 1087, 180 S.W. (2d) 735).

In speaking of the duties of the county clerk, it is said in 15 C. J., Counties, Section 178(b), page 510, that in jurisdictions where he is to perform all clerical services which naturally attach to that position in connection with matters controlled by the county court and within its authority, and which would be necessary to enable it fully to perform its duties in relation thereto, the clerk should attend meetings of the court and keep records of its proceedings in accordance with its directions. In other words, the record and matters which are to be made of record are subject to the control of the court as a body.

Therefore, we are of the opinion that if there is a dispute between the presiding judge and other members of the court as to whether or not something should be made a matter of record, the majority should prevail as being the will and action of the court.

CONCLUSION

It is the opinion of this office that if the presiding judge of the county court and the other members thereof disagree as to what shall be made a matter of record, the county clerk should follow the direction of the majority as being the action of the court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General