

COUNTY COURT:  
PUBLIC OFFICERS:

FILED  
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(1) A county court may not lawfully permit the usage of public property in the form of office space in a county courthouse for the conduct of a private commercial enterprise, either with or without a formal leasing arrangement; and (2) that a deputy clerk of the county court in a county of the fourth class is not prohibited from engaging in the business of preparing abstracts of titles in such counties.

February 23, 1955

Honorable Robert L. Carr  
Prosecuting Attorney  
Washington County  
Potosi, Missouri

Dear Mr. Carr:

Reference is made to your request for an official opinion of this department reading as follows:

"The clerk of the county court of Washington County, a county of the fourth class, has appointed a deputy clerk under the provisions of Section 51.460, Revised Statutes of Missouri, 1949, and the deputy clerk performs the duties required of him in the office used by the county clerk. The deputy clerk is the owner of a set of abstract books, abstracting the deed records of Washington County, and is engaged in the abstract business.

"There is a small office in the county court house which adjoins the office of the clerk of the county court, and it is in this small office that the deputy clerk now operates his abstract business. The deputy clerk has a hired employee who does the actual work of abstracting and who occupies the small office which has been mentioned. The abstract business is publicly advertised under the name of the deputy clerk. There is no payment made from the deputy clerk to the county court for the use of the described office.

"It will be greatly appreciated if you will cause an opinion to be sent to this office dealing with the legality of the

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deputy clerk of the county court engaging in the abstract business for private gain. I should like for the opinion to specifically cover the legality of the county court allowing space in the county court house to be used for such a private enterprise by any person, whether or not he be the deputy clerk of the county court or other county official."

Your first question relates to the propriety of use of publicly owned office space in a courthouse by a person for private commercial purposes, with or without a leasing agreement. It is our thought that your question in this regard is answered by a previous official opinion of this department rendered under date of February 13, 1951, addressed to the Honorable James E. Curry, Prosecuting Attorney, Douglas County. Your attention is particularly directed to that portion of the opinion commencing on page five, together with paragraph two of the conclusion appended thereto. The reasoning in the opinion mentioned, insofar as it relates to the question you have proposed, was re-adopted by the present Attorney-General in a subsequent official opinion delivered under date of December 20, 1954, to the Honorable John Hosmer, Prosecuting Attorney-Elect of Webster County. Copies of the opinions referred to are enclosed herewith.

Your second question relates to the propriety of a deputy clerk of the county court engaging in the business of preparing abstracts within the county wherein he serves as such officer. It is noted that Washington County is one of the fourth class following the classification of counties adopted by the General Assembly and found Chapter 48, RSMo 1949. Consequently, authorization for the appointment of a deputy county clerk in such county appears under the provisions of Section 51.460, RSMo 1949.

We have examined the various statutes relating to the duties of county clerks and of their deputies and do not find any prohibition against such officials or deputies thereof engaging in the commercial activity of preparing abstracts of title. Parenthetically, we might observe that the only official against whom such a statutory prohibition does exist is the recorders of deeds of the various counties who, under the provisions of Section 59.200, RSMo 1949, are specifically prohibited from engaging in such activity. In the absence of such a prohibition, we conceive of no valid legal reason which would deprive such official of his right to engage in such activities. However, if

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in fact the conduct of such business interfered with the discharge of his official duties, it might very well serve as the basis for his removal from his position as deputy clerk. That, however, is a phase of the matter upon which this office does not purport to deliver any opinion.

CONCLUSION

In the premises, we are of the opinion:

(1) That a county court may not lawfully permit the usage of public property in the form of office space in a county courthouse for the conduct of a private commercial enterprise, either with or without a formal leasing arrangement; and,

(2) That a deputy clerk of the county court in a county of the fourth class is not prohibited from engaging in the business of preparing abstracts of titles in such counties.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

Enclosures

Opinion to Honorable James E. Curry 2-13-51  
Opinion to Honorable John Hosmer 12-20-54