

COUNTY COURT: 1. County court of a second class county is
ACCOUNTING OFFICER: not obligated to pay for any supplies or per-
COUNTY SUPPLIES: sonal services acquired by contract or by order
COUNTY BUDGETS: unless such contract or order bears the proper
certification of the accounting officer. 2. A
county court of a second class county is not obligated to pay for
supplies acquired by contract or by order when the price or the
bill for such supplies so acquired exceeds the encumbrance stated
in the certification of the accounting officer for the contract or
order. 3. The county court cannot voluntarily pay for such per-
sonal services or supplies for which it is not legally obligated
to pay even if there is a balance otherwise unencumbered to the
credit of the appropriation to which it is to be charged, and a
cash balance otherwise unencumbered in the treasury to the credit
of the fund from which payment is to be made. 4. County officers,
who acquire supplies or personal services under the circumstances
set out in 1 and 2 above, are liable personally and on their bond
for such obligations under Section 50.650 RSMo 1949.

December 7, 1955

Honorable Frank D. Connett, Jr.
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"I would like to have an opinion from your office on the following question:

"Would it be unlawful for the Buchanan County Court (a second-class county) to pay for supplies which had been delivered and lawfully contracted for except for the fact that the contract or order, as the case might be, did not bear the certification of the Accounting Officer that there was a balance to the credit of the appropriation to which it was to be charged and that there was a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment was to be made as required by Section 50.660 RSMo.1949?

"However, there actually was such a balance otherwise unencumbered to the credit of the appropriation to which it would be charged and also an unencumbered cash balance in the treasury to the credit of the fund from which payment could be made. You can assume that Sections 50.760 to 50.790 inclusive,

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RSMo.1949 have been complied with where applicable.

"This problem arises under two instances. 1. When it is necessary to incur obligations over the weekend and emergencies for personal services. 2. When an encumbrance is set up by the auditor before the contract or order is made but it turns out that the bill is bigger than the encumbrance. This sometimes happens on the repair of machinery where by your opinion to me dated January 27, 1955, by Robert R. Welborn, it is not necessary to take bids.

"It would seem to me that in these instances the county might not be compelled to pay but could do so if they so desired.

"If they did not, then the person contracting could recover their money under Section 50.650 RSMo.1949."

All contracts or orders referred to herein are to be assumed to be made pursuant to and in accordance with Sections 50.760 to 50.790 RSMo 1949.

Your first question would seem to be whether the county court of Buchanan County is obligated to pay for supplies which had been ordered by contract or order by the county court or by a county officer authorized under Sections 50.760 to 50.790 RSMo 1949, which contract or order does not bear the certification of the accounting officer that there was a balance to the credit of the appropriation to which it was to be charged and that there was a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment was to be made. That part of Section 50.660 pertinent hereto, reads as follows:

"* * * No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be

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charged and a cash balance otherwise un-
encumbered in the treasury to the credit
of the fund from which payment is to be
made, each sufficient to meet the obli-
gation thereby incurred and unless such
contract or order bear the certification
of the accounting officer so stating;
* * * (Emphasis supplied.)

Thus, this section means that no contract or order whenever made or for whatever made, that is, on a weekend or for emergency personal service, is to be binding on the county court unless the order or contract carries with it the certification of the accounting officer as provided in that section. In *Traub v. Buchanan County, Mo. Sup.*, 108 SW2d 340, the Missouri Supreme Court stated at page 343:

"The situation is that section 19 of the Budget Act (Mo. St. Ann. Sec. 12126s, p. 6434) expressly states that "no contract or order imposing any financial obligation on the county shall be binding on the county unless * * * there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligations thereby incurred and unless such contract or order bear the certification of the accounting officer so stating." (Italics added.) Concededly, none of these quoted requirements was here present.

"The Missouri rule is that, where a statute expressly states that, unless certain things are done, a contract by a political subdivision or a municipal cooperation shall be invalid, there can be no estoppel urged to support the contract. *Mullins v. Kansas City*, 268 Mo. 444, 459, 188 S.W. 193, *Seaman v. Levee District*, 219 Mo. 1, 26, 117 S.W. 1084; *Edwards v. Kirkwood*, 147 Mo. App. 599,

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614, 127 S.W. 378; W. W. Cook & Son v. City of Cameron, 144 Mo. App. 137, 142, 128 S.W. 269, 270; also, see, Phillips v. Butler County, 187 Mo. 698, 86 S.W. 231."

Also, in Missouri-Kansas Chemical Co. v. Christian County, 180 S.W.2d 735, the Missouri Supreme Court stated at page 736:

"(1) The chemical company contends it is entitled to judgment for the full amount because the county budget law does not affect its transactions with Christian County. That county is one of less than 50,000 inhabitants. Only Sections 10910 to 10917, inclusive, R.S. 1939, Mo. R.S.A., of the budget law apply to such counties. It claims that Section 10932 which invalidates contracts made in violation of the county budget law does not apply to counties of this class." (Emphasis supplied.)

Section 10932 RSMo 1939, is now Section 50.660 RSMo 1949.

Thus, the Missouri Supreme Court has inferred by the last two cited cases that unless the things be done as set out in Section 50.660 RSMo 1949, the contract or order is invalid. Being invalid the county court would not be obligated to pay for such supplies or personal services.

Your second question is whether the county court is obligated to pay for supplies ordered by contract or by order when the amount contained in the certification of the accounting officer is not sufficient to cover the bill for the supplies ordered by contract or by order. Reading that part of Section 50.660 that is quoted supra, we come upon these words: "unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred * * *".

Thus, according to these words as used in that section the contract or order is not binding upon the county if the amount or the encumbrance certified by the accounting officer is not sufficient to cover the price or the bill for the supplies, or in other words, if the contract or order is for a greater sum than that set aside as

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certified by the accounting officer, then the contract or order is not binding upon the county court and the county court would not be obligated to pay the same.

Your third question is whether or not the county can voluntarily pay for such goods or services if it does, in fact, have a sufficient balance otherwise unencumbered to the credit of the appropriation to which it is to be charged, and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which it is to be paid.

If we were dealing with private persons, it would, of course, be permissible to pay for such goods or services actually received. However, in this case, we are dealing with public officials handling and disbursing public funds. Such public funds, it has been held by the courts of Missouri, are trust funds and those who have the custody of such funds are absolutely liable for the safekeeping and proper disbursement thereof, and such liability attaches even in the case of loss without fault or negligence on the part of the custodian. See *City of Fayette v. Silvey*, 290 SW 1019. A study of the Missouri cases reveals that public officials are authorized to disburse such public funds only when and in the manner specifically authorized by statute. See *Kansas City v. Halvorson*, 352 Mo. 280, 177 SW2d 495; *Elkins-Swyers Office Equipment Co. v. Moniteau County*, 357 Mo. 448, 209 SW2d 127; and *State v. Weatherby*, 344 Mo. 848, 129 SW2d 847.

Thus, since the statutes do not specifically authorize the county to pay for the goods and services here in question, and since the statutes do specifically provide that there is no legally enforceable obligation upon the county to pay for such goods or services, it is the conclusion of this office that the county may not voluntarily expend public funds for such purposes. To allow a county to make such voluntary payments would open the door to all manner of favoritism and abuse, and when the statutes provide that the county is not obligated to pay, it follows that they may not voluntarily pay.

Your fourth and last question is if the county court is not obligated to pay for such supplies or services as set out in questions one and two, then would the person contracting or ordering the supplies and services be obligated personally or on their bond to pay for such under Section 50.650 RSMo 1949. That part of Section 50.650 pertinent hereto reads:

"* * * Any officer purchasing any supplies, materials or equipment shall be liable per-

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sonally and on his bond for the amount of any obligation he may incur against the county without first securing the proper certificate from the accounting officer. * * *

In *Missouri-Kansas Chemical Co. v. New Madrid County*, 139 SW2d 457, the Missouri Supreme Court said at page 458:

"(3) Section 20 of the county budget law provides, in part, that 'any officer purchasing any supplies * * * shall be liable personally * * * for the amount of any obligation he may incur against the county without first securing the proper certificates from the accounting officer.' Plaintiff says this section renders defendant Harris liable. As stated, New Madrid is a county of less than 50,000 inhabitants. Section 20 applies to counties of more than 50,000 inhabitants. See Sec. 9, mentioned supra. * * *" (Emphasis supplied.)

Thus, under that part of Section 50.650 cited above, and under the quoted part of the case cited above it seems that where a county officer of a second class county orders supplies by contract or order without first securing a proper certificate from the accounting officer such county officer is liable personally and on his bond for the amount of such obligation, and also when a county officer purchases supplies in excess of the sum contained in the certificate of the accounting officer, he would be liable for the full obligation incurred against the county.

Conclusion.

It is the opinion of this office that:

1. A county court of a second class county is not obligated to pay for any supplies or personal services acquired by contract or by order by a county officer unless such contract or order bears the proper certification of the accounting officer.

2. A county court of a second class county is not obligated to pay for supplies acquired by contract or by order when the price or the bill for such supplies so acquired exceeds the encumbrance stated in the certification of the accounting officer for the contract or order.

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3. The county cannot voluntarily pay for such supplies or services for which it is not legally obligated to pay.

4. County officers who acquire supplies or personal services under the circumstances set out in 1 and 2 above, are liable personally and on their bond for such obligations under Section 50.650 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General

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