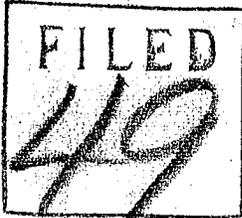


JUDGE OF THE JUVENILE COURT
OF JACKSON COUNTY:
DETENTION HOME FOR NEGLECTED
CHILDREN:



The hiring of building and maintenance employees for a place of detention for neglected and delinquent children in Jackson County, resides in the county court of Jackson county and not in the Judge of the Juvenile Court of said county, and therefore the salaries of said employees cannot properly be included in the budgetary request for appropriations of the Judge of the Juvenile Court of Jackson County.

January 18, 1955

Honorable J. Marcus Kirtley
County Counselor of Jackson County
202 Courthouse,
Kansas City, Missouri.

Dear Sir:

Your recent request for an official opinion reads as follows:

"Section 49.270 R.S.Mo. 1949 provides that the County Court shall have control and management of the property, real and personal, belonging to the County.

"Section 211.100 R.S. Mo. 1949 provides that it shall be the duty of the County Court to provide a place for detention for neglected and delinquent children, and further provides that such place shall be in charge of a superintendent and matron to be appointed by the Judge of the Juvenile Court.

"The Judge of the Juvenile Court in Jackson County has included in his budgetary request appropriations for all building and maintenance employees in such detention home, which employees have been named by him.

"The County Court asserts that under Section 49.270, above set forth, it, in the management of a county building, has the right to appoint all building employees and that the appropriations therefor are not to be included in the budget of the Juvenile Court.

"At the direction of the County Court I respectfully request your opinion as to this controversy."

Section 49.270 RSMo 1949, to which you refer, reads:

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"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

In our consideration of this matter we are impressed, first, with the fact that the appointive power, in the instant situation, of the Judge of the Juvenile Court, is based wholly upon Section 211.100, supra. That portion of the section which vests appointive power in the judge of the juvenile court is: "Such place or places shall be in charge of a superintendent and matron, or either or both, or other person of good moral character, such person or matron to be appointed by the judge of the juvenile court. The superintendent and matron shall each receive such salary as the judge of the juvenile court may prescribe, the superintendent not exceeding Eighteen Hundred Dollars per annum, and the matron not exceeding Twelve Hundred Dollars per annum, payable monthly out of the funds of the county."

We believe, and will assume, that it was the legislative intent that both the superintendent and the matron be appointed by the judge of the juvenile court. But at that point it would appear that the appointive power of the judge of the juvenile court ended. We believe that the authority of the judge of the juvenile court is strictly limited by statute, and that the judge of the juvenile court can do only what the statute authorizes him to do. That authority, in the instant case, so far as appointment of officers of places of detention is concerned, is limited to the superintendent and the matron. In other words, the judge of the juvenile court can do only what the statutes authorize him to do.

While you do not so state, we assume that the judge of the juvenile court has appointed the superintendent and the matron; that the county court does not contend that he did not have authority to do so; and that so far as the present controversy is concerned, the appointments of the superintendent and the matron are not in issue.

You state further that the judge of the juvenile court has appointed "all building and maintenance employees in such detention home", and that the county court contends that such appointive authority is vested in it and not in the judge of the juvenile court. In this contention we believe the county court to be correct, not

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only because, as we have already pointed out, such power of appointment does not reside in the judge of the juvenile court, for the reasons given by us above, but for the further reason that we believe that such power does definitely reside in the county court.

In this regard we note that Section 49.270¹ supra, states that "the said court (the county court) shall have control and management of the property, real and personal, belonging to the county".

Section 211.100, supra, states that "it shall be the duty of the county court * * * to provide a place or places of detention for children.* * *"

The above statutes charge the county court with the care of county property; such care, of course, involves maintenance; and maintenance involves the hiring of persons to do the maintenance work. Since the charge of maintenance is placed upon the county court, we believe that it follows that the hiring of such maintenance employees resides in and is the responsibility of the county court; in other words, that the authority to hire is implied.

In this respect, we direct attention to the case of Walker v. Linn County, 72 Mo. 650. At l.c. 653, the Missouri Supreme Court stated:

"That a county court is invested with such powers only as are expressly conferred upon it by statute, and such as may be fairly or necessarily implied from those expressly granted, we think cannot be questioned. It, therefore, follows that the question of the power of the county court to bind the county in a contract such as is here sued upon, must be solved by the statute. The statutory provisions bearing upon the subject, are as follows:
'County courts shall, moreover, have the control and management of the property, real and personal, belonging to the county.' Wag. Stat., 441, sec. 9.
'The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their country from waste or damage'. Wag. Stat., 404, sec. 17.
'County courts may appoint an agent to make any contract on behalf of such county for erecting any county buildings; or for any other purpose authorized by law; and the contract of such agent duly executed on behalf of such county shall bind such county.' Wag. Stat., 408, sec. 3.

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"The duty devolved upon county courts in the foregoing sections of taking such measures as shall be necessary to preserve all buildings and property belonging to a county carries with it the power to bind the county in a contract which, in the exercise of the judgment of the court, may seem to be necessary to consummate the object for which the duty was imposed, and which, in point of fact, tends directly to consummate the object. The contract in question is, we think, of this character, and is, therefore, binding on the county, provided it is shown by the evidence that it was either made, or ratified and approved by the court."

In the case of *Aslin v. Stoddard County*, 106 S.W.(2d), the Missouri Supreme Court stated:

"By section 2078, R.S.1929, Mo. St. Ann. sec.2078, p. 2658, it is provided that the county court 'shall have control and management of the property, real and personal, belonging to the county.' This express authority and duty carries with it the necessarily implied authority to employ such labor and service as may reasonably be requisite in order to effectuate the express power granted. Of such character is the work of a janitor, such as plaintiff herein. By the order of court and the contract pursuant thereto employing him he did not become an officer of the county, but only an employee, to whom no attempt was made to delegate governmental or other such functions of the court which from time to time might involve matters of discretion to be exercised by that body. See, on this question, *Manley v. Scott*, 108 Minn. 142, 121 N.W. 628, 630, 29 L.R.A. (N.S.) 652, and notes in latter volume."

In view of the above, we believe that the appointment of the employees in question resided in the county court and not in the judge of the juvenile court, and that, therefore, the judge of the juvenile court was not authorized to include the salaries of such employees in his budget.

CONCLUSION

It is the opinion of this department that the hiring of building and maintenance employees for a place of detention for neglected and delinquent children in Jackson County, resides in the county

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court of Jackson county and not in the judge of the juvenile court of said county, and that, therefore, the salaries of such employees cannot properly be included in the budgetary request for appropriations of the judge of the juvenile court of Jackson county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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