

COUNTY COURTS: County court may not obligate county by designating in December, 1954, newspaper  
COUNTY FINANCIAL REPORTS: in which county's financial report is to be published after January 1, 1955.



February 3, 1955

Honorable Charles W. Medley  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request is as follows:

"A situation has arisen in St. Francois County and the County Court has requested that I write you for an attorney general's opinion and I respectfully request the same.

"The facts are as follows:

"Section 50.800 R.S.M. 1949 provides that on or before the first Monday in March of each year after the taking effect of this law the county court of each county in this state shall prepare and publish in some newspaper of general circulation published in such county, if such there be, and if not be notices posted in at least ten places in such county, a detailed financial statement of the county for the year ending December thirty-first, preceding.

"Pursuant to this statute, the then County Court, entered an order on the 9th day of December, 1954, authorizing the Farmington News, a weekly newspaper in this county to publish the financial statement for the year 1954, and they also authorized Harold Thomas, the then county clerk to prepare this financial statement.

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"On January 1, 1955, a new County Court took office, having been elected at the general election in November, 1954.

"On January 24, 1955, the new County Court discovered that this order had been made authorizing the Farmington News to publish the financial statement for 1954 and the new Court was of the opinion that some other newspaper in the county would be able to render the county better service in the publication of the financial statement and they notified the Farmington News.

"The Farmington News had allegedly expended \$500.00 in partially preparing the financial statement for publication.

"QUESTION No. 1: Would the County Court as of December, 1954, have a right to designate a newspaper to publish the financial statement in 1955 for the year 1954?

"QUESTION No. 2: Would the present County Court which took office as of January 1, 1955, be bound by the old Court's order as to who should publish the financial statement?

"QUESTION No. 3: Assuming the new Court authorizes a different newspaper to publish the financial statement, would the County be liable to the Farmington News for a breach of contract or for any other liability?

"Would appreciate a very prompt reply as this financial statement must be published by the 1st Monday in March of 1955."

Section 50.800, RSMo 1949, provides, in part, as follows:

"1. On or before the first Monday in March of each year after the taking effect of this law the county court of each county in this state shall prepare and publish in some newspaper of general circulation published in such county, if such there be, and if not by notices posted in at least ten places in such

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county, a detailed financial statement of the county for the year ending December thirty-first, preceding."

Section 50.810, RSMo 1949, provides, in part, as follows:

"1. The statement shall be set in the standard column width measure that will take the least space and the publisher shall file two proofs of publication with the county court and the court shall forward one proof to the state auditor and shall file the other in the office of the court. The county court shall not pay the publisher until said proof of publication is filed with the court and shall not pay the person designated to prepare the statement for the preparation of the copy for said statement until the state auditor shall have notified the court that said proof of publication has been received and that it complies with the requirements of this section."

Section 50.800 obviously contemplates that publication of the financial statement will be made between January 1 and the first Monday in March of each year. Publication prior to January 1 would be impossible inasmuch as the county's financial condition as of the end of the year could not possibly be ascertained prior to that date.

Under Section 50.810 no expenditure of county funds for the publication may be made until after proof of the publication has been filed by the court and the report as published has been approved by the State Auditor.

In view of the foregoing provisions, we think it clear that no expenditure of county funds for the publication of the report may be made until sometime after January 1 of each year. As a result, we feel that the question of the authority of a county court to designate a newspaper for publication of the report must be considered in the light of the county budget law.

Section 50.670, RSMo 1949, applicable to counties of the third class, the class to which St. Francois County belongs, provides, in part, as follows:

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" \* \* \* The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January first, and ending December thirty-first. \* \* \*"

Under this provision the expenditures for the publication of the 1954 financial statement must be included in the budget for 1955, inasmuch as the Legislature has clearly evidenced the intention that the county's fiscal affairs shall be conducted on a calendar year basis.

In view of the foregoing, we feel that a county court would have no authority to incur any liability on behalf of the county for publication of the report prior to the year for which the item is required to be budgeted. The courts have held on numerous occasions that under the county budget law the county may be obligated for an expenditure, even though for county purposes, only when there has been provision made in the county budget for such expenditure and only when there is an unexpended balance in the fund to which the expenditure must be charged. *Missouri-Kansas Chemical Corporation v. New Madrid County*, 345 Mo. 1167, 139 S.W. (2d) 457; *Elkins-Swyers Office Equipment Co. v. Moniteau County*, 357 Mo. 448, 209 S.W. (2d) 127.

The wisdom of such requirement seems to us apparent. To permit an outgoing county court to enter into contracts to be paid out of the subsequent year's budget could possibly result in a complete upsetting of a county's financial system.

In reaching the above conclusion we have taken into consideration the case of *Aslin v. Stoddard County*, 341 Mo. 138, 106 S.W. (2d) 472. In that case an outgoing county court on December 31 of the last year of the terms of two of its members entered into a contract with a janitor for the county courthouse for a period beginning on January 1. The incoming county court refused to recognize the contract and the janitor sued for breach of his contract. The county contended that the county court could not enter into a contract extending beyond the term of office of some of its members. The court rejected this contention, stating, 106 S.W. (2d) 1.c. 477:

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" \* \* \* In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold."

The Aslin case, however, involved the transaction entered into prior to the enactment of the county budget law. Its provisions were not applicable and, therefore, were not considered by the court.

We have also considered the case of State ex rel. Taylor v. Wade, 360 Mo. 895, 231 S.W. (2d) 179. In that case the court held that the failure of the county court to include in the county budget provision for expenditure for publication of the annual financial report was no defense to an action in mandamus to compel publication of such report. The court stated in that case with reference to the annual financial statement, 231 S.W. (2d) 1.c. 183:

" \* \* \* So here, while the Legislature did not fix the exact amount to be included in the budget, its direction in these statutes that such a statement must be prepared and published annually is a mandate to the county court to include a reasonable amount for that purpose in each year's budget; and the amounts required for this purpose have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred."

However, we feel that the decision in that case affords no excuse to a county court for failing to comply with the county budget act and include in its budget provision for the cost of publication of the county's annual financial report. In the Wade case the county court sought to excuse its failure to perform a mandatory duty on the grounds that it had failed to perform another duty likewise imposed upon it by law.

As for the question of liability of the county to the newspaper previously designated by the county court, in view of the fact that the outgoing county court had no authority to contract for the publication, no liability could be imposed upon the county to the newspaper originally designated. In the case of Bayless v. Gibbs, 251 Mo. 492, 1.c. 506, 158 S.W. 590, the court stated:

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"This court, in numerous cases, has repeatedly held, that the county courts of the respective counties of the State are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void.

"Consequently, this court has also repeatedly held, that all persons while dealing with said courts or agents are bound to take notice of their powers and authority." (Emphasis ours.)

There is also another matter to be considered in this connection. You have informed us that the county court made no written contract with the Farmington News but merely designated it by order entered of record as the newspaper in which publication was to be made. In this connection we call your attention to Section 432.070, RSMo 1949, which provides:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

If the order of the county court is the only writing relative to the purported contract, it is obvious that under this section it would be void because it had not been "subscribed by the parties thereto." The courts have held on numerous occasions that contracts entered into by counties and other political subdivisions contrary to the provisions of this section are void. Missouri-Kansas Chemical Co. v. Christian County, 352 Mo. 1087, 180 S.W. (2d) 735.

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If there is no written contract, the fact that the Farmington News had expended \$500.00 in preparing to publish the report would not extend to that newspaper the benefit of Section 431.090, RSMo 1949. That section provides:

"The county court may, by an order entered of record, 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 if pursuant to law and such order of court."

In the case of Missouri-Kansas Chemical Co. v. Christian County, supra, the court explained the effect of this section in cases where no written contract had been entered into as follows, 180 S.W. (2d) 736:

"This court has held that this section applies only where the parties have not followed the required form of procedure in executing a contract and that it affords no relief where the parties have failed to follow the conditions imposed upon the making of a contract. Scott v. St. Louis County, 341 Mo. 1084, 111 S.W. 2d 186; Hillside Security Co. v. Minter et al., 300 Mo. 380, 254 S.W. 188."

#### CONCLUSION

Therefore, it is the opinion of this office that:

- (1) The county court as of December, 1954, has no authority to obligate the county by designating a newspaper to publish the annual financial report of the county for the year 1954, which publication must be made sometime after January 1, 1955;
- (2) That the county court which took office as of January 1, 1955, would not be bound by the old court's order as to who should publish the financial statement;
- (3) That should the new court enter into a contract with a different newspaper to publish the financial statement, the county

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would not be liable to the newspaper previously attempted to be designated for publication by the county court in 1954 for a breach of contract or for any other liability, particularly where no written contract signed by the parties has been entered into for such publication.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:ml