

COUNTIES:
COUNTY COURT:
DISPOSAL AREAS:

County Court may not rescind order entered under
Section 64.483, making County Option Dumping Ground
Law operative within its county.



October 3, 1956

Honorable H. K. Stumberg
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Mr. Stumberg:

This is in response to your request for an opinion dated August 13, 1956, which reads as follows:

"Please be advised that on the 12th day of March, 1956, the County Court of St. Charles County, Missouri, after notice and hearing by order of record made Sections 64.460 to 64.487 VAMS operative in St. Charles County, Missouri. Since that date the County Court has been requested to rescind its order of March 12th making these sections operative. I have given the Court my opinion to the effect that there is no provision in the act itself which provides for making a section inoperative once it has been made operative and in this connection my opinion was based not only on the statute itself, but on the decisions rendered in Mead vs Jasper County 266 SW 467 and State ex rel Rosenthal vs Smiling 263 SW 825. The County Court is not satisfied with the opinion which I have rendered and I have been asked to obtain your official opinion as to whether or not there is any manner in which this act can be made inoperative in St. Charles County. In this connection, I would like to call to your attention that the Term of Court in which the original order was made has terminated and we are now in a new term of Court.

"I will appreciate your opinion in this matter."

Section 7 of Article VI, Constitution of Missouri 1945, provides that in a county not framing and adopting its own charter

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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. County Courts are no longer courts in a juridical sense but are merely ministerial bodies managing the county's business. State ex rel. Kowats v. Arnold, 356 Mo. 661, 204 S.W. 2d 254, 258.

It has also been held on numerous occasions that a county court is only the agent of the county with no powers except those granted and limited by law and, like other agents, it must pursue its authority and act within the scope of its powers. Bradford v. Phelps County, Mo. Sup., 210 S.W. 2d 996, 999.

Sections 64.460 - 64.480, RSMo. Cum. Supp. 1955, enacted by the 68th General Assembly, provide for the regulation and licensing of disposal areas but Section 64.483 stipulates that "Sections 64.460 - 64.487 shall not be operative in any county until the county court, after notice and hearing, by order entered of record, so orders."

You have informed us that the county court has so ordered and we presume regularity in the notice, hearing and order. The sole question is whether the court now has the authority to rescind its order and make the above sections again inoperative in St. Charles County.

You have also cited us to two cases which we deem to be in point and determinative of the question.

In State ex rel. Rosenthal v. Smiley, 304 Mo. 549, 263 S.W. 825, the legislature had created the office of county counselor in counties having a population of over 100,000 but vested the county court with the discretion of determining whether in each county of that class those statutes creating the office should become effective. The court ordered the appointment of a county counselor and subsequently sought to rescind that order and to declare the office vacant. The Supreme Court said at Southwestern l.c. 827:

"* * * The statute itself creates the office, potentially, to come into actuality upon the happening of a future contingency; namely, the exercise of the power of appointment conferred by it upon the county court. State v. Wilcox, 45 Mo. 458, 464. When, therefore, the county court, on December 1, 1922, appointed Kiskaddon, the office of county counselor of St. Louis County came into existence, as a fixed and established county office. Thereafter the only power or duty that the county court had with respect to it was to fill it by appointment whenever it became vacant. The discretion with which the court was invested under

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the statute to determine in the first instance whether the public interest required the appointment of a county counselor was exhausted by its first appointment. * * *

The other case you have cited, Mead v. Jasper County, 305 Mo. 476, 266 S.W. 467, is to the same effect. As in the Mead case, we need not determine whether the court could have rescinded this order within the same term it was entered and before any rights accrued thereunder because that is not our factual situation.

Since the statute in question, Section 64.483, supra, merely vests the county court with the discretion to determine in the first instance whether Sections 64.460 - 64.487, RSMo. Cum. Supp. 1955, shall become operative in its county, we are of the opinion that once it has made that determination and after notice and hearing by order entered of record orders that these sections become operative, it has exhausted its authority and cannot in a subsequent term of court rescind that order.

CONCLUSION

It is the opinion of this office that once a county court, after notice and hearing, has by order entered of record ordered that Sections 64.460 - 64.487, RSMo. Cum. Supp. 1955, be operative in its county, it may not at a subsequent term of court rescind that order and thereby make such sections inoperative within the county.

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

Yours very truly,

John M. Dalton
Attorney General

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