

COUNTY: Not necessary for Presiding Judge of County Court,
COUNTY COURT: Jackson County, Missouri, to sign or indicate his
PURCHASING AGENT: approval on a purchase order.

August 8, 1957



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

Attention: Honorable Richard H. Koenigsdorf,
Assistant County Counselor

Dear Sir:

This will acknowledge receipt of your request for an opinion of this Department, which reads:

"The County Court of Jackson County, Missouri, has requested this office to write you for an opinion as to the requirements prescribed for the County Court in authorizing or validating a written order of purchase made by the Purchasing Agent of this county after properly certified to by the Accounting Officer of the county, particularly with reference to the following:

"(1) Is it necessary that the Presiding Judge of this County sign, or in any manner indicate his approval, on a written order of purchase prepared by the Purchasing Agent before such order of purchase becomes valid?

"(2) If your answer to No. 1 is in the affirmative, may the other judges of the County Court authorize a purchase if the Presiding Judge refuses to sign or disapprove an order of purchase of the purchasing agent?

"(3) If your answer to No. 1 is in the negative, what is the requirement for signature

Honorable J. Marcus Kirtley

by any particular official or officers of this county to validate an order of purchase by Jackson County?

"This matter ^{be} is of immediate concern in this county and it would be appreciated if you would give same your earliest possible consideration."

Article VI, Section 7, Missouri Constitution, vests in the county court authority to manage all county business as prescribed by law.

Section 50.753, MoRS Cum. Supp. 1955, created for all first class counties the office of county purchasing agent, and reads:

"There is hereby created in all counties of the first class not having a charter form of government the position of county purchasing agent. The purchasing agent shall be appointed by the county court by order of the court and shall serve at the pleasure of the court, and at such compensation as shall be determined by the court; such purchasing agent shall be entitled to such assistants and employees as the county court shall appoint and at such compensation as shall be determined by the court."

Section 50.755, MoRS Cum. Supp. 1955, further requires all county officials and employees shall make known to the county purchasing agent in first class counties their needs, and it is then the duty of said purchasing agent under the direction of the county court to investigate and determine the actual need for same. Said section reads:

"All county officers, officials or employees, shall make known to the county purchasing agent, as herein provided, any and all requirements that may exist for the purchase of any and all articles needed for the proper conduct or duties of their office or position, and it shall be the duty of such purchasing agent, under the direction of the county court, to investigate and determine if such article or articles are necessary and actually required for the proper conduct of the official business of the county.

Under Section 50.757, MoRS Cum. Supp. 1955, it prescribes the duty of said county purchasing agent which is to purchase necessary

Honorable J. Marcus Kirtley

supplies for the conduct of the county business in all departments and said section reads:

"It shall be the duty of the county purchasing agent to purchase all supplies of whatever kind or nature, necessary for the conduct of the business of the county in all its departments; and the county shall not be liable for any debts except upon the written order of such purchasing agent, which agent shall be required to make purchases only from those offering the lowest price, quality considered, and the purchasing agent is not authorized to purchase supplies of higher quality or price than is reasonably required for the purpose to which they are to be applied."

Section 55.010, MoRS 1949, briefly provides that the county auditor in first class counties as Jackson County, shall also be the budget officer and accounting officer of the county.

Section 55.030, MoRS 1949, further provides that the county auditor shall keep accounts of all appropriations and expenses made by the county court and no warrant shall be drawn or obligation incurred without his certificate to the effect that there remains an unencumbered balance sufficient to pay same. Furthermore, that he shall audit and examine all accounts, demands and claims presented for payment before same shall be allowed or a warrant issued therefor.

You first inquire if it is necessary that the presiding judge of the county court of Jackson County, Missouri, sign, or in any manner indicate, his approval on a written order of purchase prepared by the purchasing agent before such order of purchase becomes valid.

Your request is not as to whether the presiding judge is required to sign a warrant for the payment of such expenditure. The appellate courts have held that to be merely a ministerial duty and that he must affix his signature thereto or he is subject to mandamus.

We understand from your request that said purchase order made by your purchasing agent has been properly certified to by the county auditor of Jackson County, Missouri.

In view of the foregoing statutes creating the office of the county purchasing agent, granting said purchasing agent of said county authority to determine the necessity for any supplies and then directing him to purchase such necessary supplies for the various departments, we believe that it was the legislative intent in enacting

Honorable J. Marcus Kirtley

such statutes to permit said purchasing agent to exercise his discretion with only slight limitations thereon. That such purchase order must, of course, have the certification of the county auditor and that under Section 50.755, supra, the county purchasing agent must determine the necessity for any supplies requisitioned by any county official or employee under the direction of the county court. The words "under the direction of the county court" have seldom been defined by the appellate courts, however, one decision, namely, *Ross v. Long*, 258 N.W. 94, 219 Iowa 471, the court did define such words. In said decision the statute to be construed authorized the conservator of the national bank to act "under the direction of the comptroller" and the court in its decision held that to mean no more than that the conservator shall be subject to the direction of the comptroller, but that it did not require him to secure special authorization from the comptroller before bringing action on ordinary claims against a debtor. In so holding, the court said at l.c. 95:

"[4-6] The federal statute relating to the appointment powers, and duties of a conservator of a national bank provides as follows: 'Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors, * * * * the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller * * * * deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks.' Section 203 of the National Act of March 9, 1933, Bank Conservation Act, §203 [12 USCA §203]. The language of this statute authorizes the conservator under the direction of the Comptroller to take possession of such books, records, and assets of every description, and take such action as may be necessary to conserve the assets of such bank. It also gives the conservator all the rights, powers,

Honorable J. Marcus Kirtley

and privileges given receivers of insolvent national banks. It is the well-settled rule of law that it is part of the duties of a receiver to collect the assets of the bank, and, in pursuance of this authority and duty, he has a right to commence an action for the collection of the securities in his possession. The very purpose of his appointment is to do what his name implies, viz., to conserve the assets of the bank. It is claimed by defendant that, because the statute authorizes the conservator to act under the direction of the Comptroller, it is necessary for him, before commencing an action, to first receive authority therefor from the Comptroller. This language, however, means no more than that the conservator shall be subject to the direction of the Comptroller, and is not intended to require him to secure special authority from the Comptroller before bringing an action on an ordinary claim against a debtor. As conservator, he was the holder of the notes in question, and as such was a proper party. Code §9511; Turner v. Richardson, 180 U.S. 87, 21 S. Ct. 295, 45 L. Ed. 438; National Bank of Metropolis v. Kennedy, 17 Wall. 19, 21 L. Ed. 554; Bank of Bethel v. Pahquioque Bank, 14 Wall. 383, 20 L. Ed. 840; Cadle v. Baker, 20 Wall. 650, 22 L. Ed. 448."

Under Sections 50.757, 55.030, supra, and Section 50.660, Mo. RS 1949, the only signature required on such purchase orders is that of the county purchasing agent along with the certificate of the county auditor.

CONCLUSION

Therefore, it is the opinion of this Department that it is not necessary for the presiding judge of Jackson County court to sign, or in any manner indicate his approval of, a written order of purchase prepared by the purchasing agent before such order of purchase becomes valid. The only signature required on a purchase order to

Honorable J. Marcus Kirtley

validate same is that of the county purchasing agent, along with the certificate of the county auditor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARH:mw