

LABOR UNIONS:  
COUNTY HIGHWAY COMMISSION:  
COLLECTIVE BARGAINING:

Under provisions of Constitution of 1945, and Revised Statutes of Missouri 1949:  
(1) Employees of county highway commission may organize a labor union. (2) County court cannot enter into collective bargaining with such union. (3) County court cannot enter contract of employment with such union.



March 15, 1957

Honorable W. H. S. O'Brien,  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Mr. O'Brien:

This department is in receipt of your recent request for a legal opinion reading in part as follows:

"Mr. Perry Bud Richardson, International Representative and Organizer of the 'International Union of Operating Engineers', has come before the County Court of Jefferson County and has stated that his union has been authorized by a majority of the employees of the Jefferson County Highway Department to represent those employees in negotiating a labor contract. The County Court requested me to represent them and render legal advice to them in this transaction. On behalf of the County Court I requested the union to provide us with whatever legal authority they might have authorizing a County Court to take action in this regard. The County Court was furnished with an opinion written by a lawyer representing that particular union, a copy of the entire opinion is enclosed herein.

"Will you kindly render an opinion on the following issues:

1. Under the constitution and statutes of this State can employees of a County Highway Department organize or become members of a labor union?
2. Under the constitution and statutes of Missouri may a County Court enter into collective bargaining with a labor union which represents the employees of a County Highway Department?
3. Under the constitution and statutes of this State may the County Court enter into and execute a con-

tract of employment with a labor union which represents the employees of the County Highway Department?"

The County Highway Department is referred to in each of the three inquiries of the opinion request, although our research fails to disclose any statutory authority for the highway department in any of the counties of Missouri. We do find that Chapter 230 RSMo 1949, pertains to the establishment of a county highway commission, its powers and duties.

Section 230.080 RSMo 1949, empowers the county highway commission to employ technical and other help as may be deemed necessary for the administration and enforcement of the chapter. We assume that where the county highway department is mentioned in the opinion request, such references were intended to refer to the county highway commission, and we shall so treat them in the course of our discussion.

We construe the first inquiry to ask if the constitution and statutes of Missouri authorize employees of a county highway commission to organize and become members of a labor union. The only provisions of the Missouri Constitution of 1945 referring to organized labor and collective bargaining are those found in Article I, Section 29, and read as follows:

"Organized labor and collective bargaining.--  
That employees shall have the right to organize  
and to bargain collectively through representatives  
of their own choosing."

It is noted that the above-quoted constitutional provision does not specifically refer to any particular kind or class of employees, and upon first thought it would appear that the section could be reasonably construed as affording employees of every kind or class the rights therein guaranteed. However, for reasons hereinafter given, it is believed that public employees of a county highway commission have the legal right to organize labor unions the same as employees in private industry, but such public employees do not have the right to enter into collective bargaining negotiations and contracts of that nature in the same manner as other employees.

The principle of law, that public employees of a city have the right to organize labor unions, although they do not have the right to bargain collectively with their employers, was upheld by the Supreme Court of Missouri, sitting in banc, in the case of City of Springfield v. Clouse et al., 206 SW2d 539. This was a declaratory judgment action seeking to determine the city's power

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to enter into collective bargaining agreements with a labor union composed of city employees, and concerning wages, hours, collection of union dues and working conditions. The trial court reached a decision that Article I, Section 29 of the Missouri Constitution of 1945, applies to municipal employees, i.e., such employees had the right to organize labor unions, but the city was unauthorized to enter into collective bargaining agreements with representatives of such union. In reviewing the action of the trial court the Supreme Court, in discussing the issues involved, said at l.c. 542, 543 and 545:

"This ruling does not mean, as defendants' counsel seem to fear, that public employees have no right to organize. All citizens have the right, preserved by the First Amendment to the United States Constitution and Sections 8 and 9 of Article I of the 1945 Missouri Constitution, Sections 14 and 29, Art. 2, Constitution of 1875, to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body. Employees had these rights before Section 29, Article I, 1945 Constitution was adopted. \* \* \* Organization by citizens is a method of the democratic way of life and most helpful to the proper functioning of our representative form of government. It should be safeguarded and encouraged as a means for citizens to discuss their problems together and to bring them to the attention of public officers and legislative bodies. Organizations are likewise helpful to bring public officers and employees together to survey their work and suggest improvements in the public service as well as in their own working conditions. Our General Assembly has even provided by statute for an organization of all trial and appellate judges of this state to consider and discuss the work of the courts and make recommendations for legislation. \* \* \* \* \* Organizations of other state, county and municipal officers are well known and have long been recognized as serving a useful purpose. Nevertheless, the organization and activity in organizations of public officers and employees is subject to some regulation for the public welfare. \* \* \* \* \*

" \* \* \* However, collective bargaining by public employees is an entirely different matter. This was pointed out by such a friend of union labor as our late President, Franklin D. Roosevelt, in a letter to the head of a union of Federal employees, which was read in the debates on Section 29 in our Constitutional Convention. This letter states: 'All Government employees should realize that the process of col-

lective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employe organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employes alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.'

\* \* \* \* \*

"Undoubtedly Section 29 had a different purpose. It was intended to safeguard collective bargaining as that term was usually understood in employer and employee relations in private industry. \* \* \* The only field in which employees have ever had established collective bargaining rights, to fix the terms of their compensation, hours and working conditions, by such collective contracts, was in private industry.\* \*

"Under our form of government, public office or employment never has been and cannot become a matter of bargaining and contract. \* \* \* This is true because the whole matter of qualifications, tenure, compensation and working conditions for any public service, involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principal of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void. \* \* \* Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract. Such bargaining could only be usurpation of legislative powers by executive officers; and, of course, no legislature could bind itself or its successor to make or continue any legislative act. Therefore, this section can only be construed to apply to employees in private industry

where actual bargaining may be used from which valid contracts concerning terms and conditions of work may be made. It cannot apply to public employment where it could amount to no more than giving expression to desires for the lawmaker's consideration and guidance. For these fundamental reasons, our conclusion is that Section 29 cannot reasonably be construed as conferring any collective bargaining rights upon public officers or employees in their relations with state or municipal government."

While the factual situation in this case involved civil employees of the City of Springfield, yet the court referred to them as public employees in almost every instance, and it is our thought that the conclusion reached applies equally as well to employees of the county highway commission.

Section 70.210 RSMo 1949, defines the term political subdivision to be:

"The term 'political subdivisions' as used in sections 70.210 to 70.320 shall be construed to include counties, townships, cities, towns, villages, school, road, drainage, sewer, levee and fire districts."

From the above-quoted definition it is clear that a county is a political subdivision of the state, and it follows that employees of a county highway commission would be public employees of their county, a political subdivision of the state.

Our research further discloses that no Missouri statutes prohibit employees of a county or other political subdivision of the state from becoming members of a labor union.

In view of the foregoing, and in answer to the first inquiry of the opinion request, it is our thought that, under provisions of the Constitution and Statutes of Missouri, employees of a county highway commission are authorized to organize and become members of a labor union.

We understand the second inquiry to be whether or not the Constitution and Statutes of Missouri empower the county court to enter into collective bargaining negotiations with a labor union representing employees of the county highway commission.

Again we call attention to the case of City of Springfield v. Clouse et al., supra, as it is the only Missouri case we have been able to find in point with the questions presented in the opinion request. After holding that it was proper for public employees to organize labor unions, the court had something further to say in regard to the collective bargaining powers of public employees' unions, and also the power of public officers to enter into such negotiations under provisions of Article I, Section 29 of the Constitution, supra, as

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stated above, beginning with the second paragraph of the quote on page 3.

In the case of State ex rel. Floyd v. Philpot, 364 Mo., at 735, the court held that under provisions of the new Missouri Constitution county courts were not named among the judicial courts of the state, and aside from the management of financial affairs of the county, a county court now has only those powers conferred by statute. At l.c. 744, the court said:

"County Courts are not now named among the 'constitutional courts' in which the judicial power of the state is vested (Article V, Constitution of Missouri 1945), but such courts are recognized in the Article treating with 'Local Government,' and they are given authority to 'manage all county business as prescribed by law.' Section 7, Article VI, Constitution of Missouri 1945. The authorities are uniform to the effect that, outside of the management of the fiscal affairs of the county, such courts possess no powers except those conferred by statute, Rippeto v. Thompson, 358 Mo. 721, 216 S.W.(2d) 505, 508; Bradford v. Phelps County, 357 Mo. 830, 210 S.W.(2d) 996, 999; Lancaster v. Atchison County, 352 Mo. 1039, 180 S.W.(2d) 706, 708; State ex rel. Walther v. Johnson, 351 Mo. 293, 173 S.W.(2d) 411, 413."

Chapter 49, RSMo 1949, is in regard to county courts and county buildings, and it appears that the general powers of the county court, including that of entering into and becoming a party to various classes of contracts on behalf of the county, are set forth. It is noted that none of such statutory provisions provide that a county court may enter into collective bargaining negotiations, or may enter into contracts of employment with a labor union representing county employees. In the absence of any statutory provisions authorizing it to do so, a county court does not have the power and cannot enter into negotiations with a labor union, or enter into contracts of employment with representatives of such unions. In this connection, we call attention again to the case of City of Springfield v. Clouse et al., supra, in which the court held that Article I, Section 29, of the Constitution had no reference to public officers and employees, but applied only to employers and employees in private industry. The court further stated that collective bargaining was for the purpose of reaching agreements resulting in binding contracts between unions representing employees and their employers, and the only field in which collective bargaining rights of employees to fix the terms of their compensation, hours, and working conditions by such contracts was in private industry.

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Therefore, in view of the foregoing, and in answer to the second inquiry, it is our thought that under the provisions of the Constitution and Statutes of Missouri, a county court lacks the power and cannot enter into collective bargaining negotiations with a labor union representing employees of the county highway commission.

The third inquiry asks whether provisions of the Constitution and Statutes of Missouri empower the county court to enter into and execute a contract of employment with a labor union representing employees of the county highway commission. For the reasons given in our discussion of the second inquiry, and in answer to the third inquiry, it is believed that under provisions of the Constitution and Statutes of Missouri, the county court lacks the power and cannot enter into and execute a contract of employment with a labor union representing employees of the county highway commission.

#### CONCLUSION

Therefore, it is the opinion of this department that under provisions of the Missouri Constitution of 1945, and Revised Statutes of Missouri for 1949: (1) Employees of a county highway commission may legally organize and become members of a labor union; (2) a county court lacks the power to enter into collective bargaining with a labor union representing employees of a county highway commission; (3) a county court lacks the power to enter into and execute a contract of employment with a labor union representing employees of a county highway commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton  
Attorney General

PNC/ld