

COUNTY COURTS:
COUNTY CLERK:
COUNTY AUDITOR:

1. A valid contract executed by a county court is valid and binding on the succeeding court.
2. A county clerk is not entitled to any extra compensation for performing additional duties imposed upon him by law in conducting and supervising the registration of voters.
3. A county auditor in a third class county is not personally liable unless he makes an erroneous certification.

December 28, 1961

Honorable William B. Milfelt
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Mr. Milfelt:

In your letter of October 9, 1961, you enclosed a copy of a statement submitted by Wallace V. Coleman, County Clerk, for services rendered to Jefferson County. You further enclosed a copy of a letter dated October 6, 1961, directed to you from William Rasmussen, Auditor of Jefferson County, and request an opinion from this office on the matter submitted, which letter is as follows:

"Will you advise or direct me whether or not my office (Auditor of Jefferson County) is under legal duty to approve or certify payment of the attached bill? This bill has been approved by two members of the County Court.

"I feel that several legal questions are involved concerning the nature of this bill:

"1. Does the old 1960 County Court of a 3rd Class County have the power to determine procedure or policy for a new 2nd Class County before the change in status of said county.

"2. How shall the County Clerk ex officio Registration Officer be compensated for his duties? Is it by salary, by fees, or by his rendering bills for services performed.

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"3. Is the County Auditor liable in anyway or circumstance for any obligation incurred by a county officer and approved for payment by the County Court; when the officer did not ask the auditor to certify that there is sufficient cash balances to pay the warrant? I refer to RS Mo. 1959 50:650."

In the first question submitted in Mr. Rasmussen's letter, inquiry is made whether the county court of a third class county has the power to determine procedure in policy for a new second class county before the change of status of said county becomes effective. We assume from the information you submit that "policy or procedure" you refer to concerns the validity of contracts executed by the county court in 1960 prior to the change in classification of said county, and whether such contracts would be binding on the succeeding county court of the county after the change of classification has been accomplished.

In *Aslin vs. Stoddard County*, 106 S.W. 2d 474, the county court entered into a written contract on December 31, 1932, with plaintiff to serve as janitor of the courthouse for the year of 1933. On January 1, 1933, a new county court, composed of two new judges, assumed office and thereafter refused to honor said contract. In holding the contract made by the old county court valid and binding on the new county court, the appellate court stated, l.c. 474 and 476:

"[1] I. By statute, sections 2072 and 2073, R.S. 1929, Mo.St. Ann. §§ 2072, 2073, pp. 2656, 2657, the county court is composed of three members, styled judges, one of whom, by statute, the presiding judge, is elected by the county at large for a term of four years, the other two being elected, by districts, for a term of two years, the terms of all continuing until their successors are elected and qualified. In the instant case the terms of the two 'district' judges expired December 31, 1932, if their successors, elected at the November, 1932, election qualified promptly. The presiding judge held over. The county court is a court of record, having certain judicial functions. It also has many

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administrative duties in connection with the care and management of county property and funds, school funds, highways, etc., and the business affairs of the county generally. When new or different district judges are elected and qualify, no 'reorganization' of the court is required. The presiding judge continues to be such. If he is replaced by another, his successor becomes, by operation of law, presiding judge. In view of the constitutional and statutory provisions creating county courts and prescribing their functions and duties, it is clear that the county court is a continuing body--not a succession of different boards or 'courts.'"

* * * * *

"The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs."

We believe that under the ruling of the above cited case that a contract otherwise valid executed by a county court is binding on the succeeding county court, providing the contract is made in good faith, without fraud, and is limited to a reasonable time. The fact that the classification of the county may have changed from class three to class two would not alter or change this situation.

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In the second question submitted it is inquired how the county clerk, an ex officio registration officer, shall be compensated for his duties. We assume from the other information you have submitted that the duties you refer to are the duties of the county clerk that are required to be performed by him under Chapter 114, RSMo 1959, regarding the registration of voters in the county at large.

Chapter 114, RSMo 1959, provides for local option county registration of voters. Section 114.080 provides:

"1. The county clerk is ex officio the registration officer of the county and has full charge and control of the registration of voters in the county.

"2. The county clerk's office is open for permanent registration at all times the office is open for other business, except the office is not open on Sundays and holidays. Registration shall be held at the office of the county clerk within the hours which said office is ordinarily open."

Section 114.090 provides:

"For the initial registration, the county clerk may designate additional places of registry in the county, but these places of registry shall not exceed more than one in each township in the county in addition to the office of the clerk of any city, town or village who is deputized by the county clerk under this chapter. If any additional place of registry is established, the county clerk shall place a deputy in charge thereof."

Section 114.080, supra, requires the county clerk to have full charge and control of the registration of voters in the county. There is no statutory provision allowing him any compensation for the additional duties placed upon him under this chapter. This section also provides that the county clerk's office is open for permanent registration at all times during his regular office hours except on Sundays and holidays.

Section 114.090, supra, provides that the county clerk may designate additional places for the initial registration in the county, but that the places of registry shall not exceed more than one in each township in the county in addi-

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tion to the office of the clerk of any city, town or village who may be deputized by the county clerk.

Under this section it is the duty of the county clerk to designate any additional places for registration of voters on the initial registration, but such additional places cannot exceed one in each township and the office of the city clerk in any city, town or village.

Section 114.100 provides for the appointment by the county clerk of deputies to help perform the duties required under Chapter 114. It also provides for them to be compensated for their services.

In *State ex rel Forsee vs. Cowan*, 284 S.W. 2d 478, 1.c. 481, the court states:

"The law in Missouri is well established 'that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. *Gammon v. Lafayette County*, 76 Mo. 675; *State ex rel. Evans v. Gordon*, 245 Mo. 12, 149 S.W. 638; *Sanderson v. Pike County*, 195 Mo. 598, 93 S.W. 942; *Jackson County v. Stone*, 168 Mo. 577, 68 S.W. 926; *State ex rel. Troll v. Brown*, 146 Mo. 401, 47 S.W. 504; *Bates v. City of St. Louis*, 153 Mo. 18, 54 S.W. 439, 77 Am.St.Rep. 701; *Williams v. Chariton County*, 85 Mo. 645. * * * *Maxwell v. Andrew County*, 347 Mo. 156, 146 S.W. 2d 621, 625. 'In so far as concerns compensation for services, there is a very imperfect analogy between services rendered by a public officer and those rendered by one individual to another in a private capacity. The law implies in the latter case a promise to pay as much money as the services are reasonably worth, whereas, the compensation for services of a public officer is in most cases fixed by positive law. If the fixed compensation is more than the service is worth, the public or

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party must pay it; if less, the officer must be content with it." 43 Am. Jur., sec. 362, p. 150.' Alexander v. Stoddard County, Mo.Sup., 210 S.W. 2d 107, 109. See also State ex rel. Harrison v. Patterson, 152 Mo.App. 264, 132 S.W. 1183.

* * * * *

"Now, the law is also clear that '[e]ven in the absence of statutory prohibition and even though the work or services consist of "extra services," if they are in point of fact a part of or germane to the official duties of his office, the officer's employment, for obvious reasons, is against public policy and he is not entitled to compensation for performing the services. Annotations 84 A.L.R. 936; 159 A.L.R. 606.' Polk Tp., Sullivan County v. Spencer, Mo.Sup., 259 S.W. 2d 804, 805. See also Tyrrell v. Mayor, etc., of City of New York, 159 N.Y. 239, 53 N.E. 1111, 1112; 43 Am.Jur., 'Public Officers', § 363, p. 151."

In Ward vs. Christian County, 111 S.W. 2d 182, 1.c. 183, the court stated:

"It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed.' * * *"

We believe these cases are authority for holding that a county clerk is not entitled to any extra compensation for performing the additional statutory duties that are required of him in registering and supervising the registration of voters under Chapter 114.

In the third question submitted inquiry is made whether the county auditor is liable for an obligation incurred by a county officer and approved for payment by a county court without the auditor certifying there is sufficient cash balance to pay the warrant when presented. Reference is made to Section 50.650, RSMo 1959. This section provides:

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"The accounting officer is personally liable on his bond for the amount of any obligation incurred by his erroneous certification as to the sufficiency of an appropriation or of a cash balance, or for any warrant drawn when there is not a sufficient amount unencumbered in the appropriation or a sufficient unencumbered cash balance in the fund to pay the warrant, or for the payment of any amount not legally owed by the county. Any officer purchasing any supplies, materials or equipment is liable personally and on his bond for the amount of any obligation he incurs against the county without first securing the proper certificate from the accounting officer. The other officers, as the county court requires, shall each give surety bond in an amount fixed by order of the county court for the faithful performance of his duties and for a correct accounting for all moneys and other property in his custody. The sufficiency of the sureties shall be approved by the county court. Any premium on the bonds shall be paid by the county."

Section 50.530, RSMo 1959, defines an "accounting officer" as "county auditor" when used in the county budget law.

Under Section 50.650, supra, the county auditor is personally liable on his bond for any amount of obligation incurred by his erroneous certification as to the sufficiency of an appropriation or cash balance. Certainly he is not liable personally or on his bond unless he made a certification as to the sufficiency of the appropriation or cash balance. He is also liable for any warrant drawn where there is not a sufficient amount to pay the warrant or for any amount not legally owed by the county which he erroneously certifies. An erroneous certification must be made in each of these matters before the auditor would be personally liable. It follows that unless the auditor makes an erroneous certification he would not be personally liable or liable on his bond.

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CONCLUSION

In conclusion, it is our opinion that:

1. An otherwise valid contract executed by a county court in a third class county, is valid and binding on the succeeding county court provided the contract is made in good faith, without fraud, and is limited to a reasonable time, and that the change in classification of the county from third class to second class would not change this rule of law.

2. A county clerk is not entitled to any extra compensation for performing the duties imposed upon him in conducting and supervising the registration of voters under Chapter 114, RSMo 1959.

3. That a county auditor is not personally liable unless he makes an erroneous certification regarding a warrant or obligation incurred by the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

MM:BJ