

COUNTIES:
COUNTY COURTS:

County Court of County of 3rd Class has no power or authority to rent parking space for use of county officials while attending to their official duties at county courthouse.

March 9, 1961



Honorable Stephen A. Strom
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Sir:

We have your recent request for an opinion as follows:

"I have been requested by the County Court of Cape Girardeau County to submit the following question to you for your opinion:

Can the county court rent parking space, to be used by various county officials while attending to their duties at the county courthouse, in a parking lot owned by private individuals or the chamber of commerce or city in which the county courthouse is located?"

Stated otherwise, the question is whether the County Court of Cape Girardeau County, a county of the 3rd class, has the power to rent property for the sole purpose of providing parking facilities for the use of county officials.

The law is well settled that County Courts have only such authority as is expressly granted them by statute, together with such implied powers as are essential to properly carrying into effect the purpose of the power specifically granted. This principle was stated in the case of King v. Maries County, 297 Mo. 487, 249 S.W. 418, 1.c. 420, as follows:

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"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute.* * * This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. * * *"

Again in *Butler v. Sullivan County*, 108 Mo., 630 l.c. 637 18 S.W. 1142, the court stated:

"* * *If the county court had such power it must be because some statute conferred it; for we have repeatedly ruled that such courts are not the general agents of the counties or the state, and only have such authority as is expressly granted them by statute; beyond the limits of such grant their acts are void. * * *"

Section 49.310, V.A.M.S., provides in part as follows:

"The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county. In pursuance of the authority herein delegated to the county courts, said county courts may acquire a site, construct, reconstruct, remodel, repair, maintain and equip said courthouse and jail, and in counties wherein more than one place is provided by law for holding of court, the county court may buy and equip or acquire a site and construct a building or buildings to be used as a courthouse and jail, and may remodel, repair, maintain and equip such building in said place or places. * * *"

Section 49.305, V.A.M.S., provides in part as follows:

"The county court of any county may acquire by purchase, for the county, improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary; or, when the county owns the site may acquire by purchase improved or unimproved real estate as an addition to or enlargement of the site* * *".

Section 49.510, V.A.M.S., provides as follows:

"It shall be the duty of the county to provide offices or space where the officers of the county

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may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct."

Section 49.270, V.A.M.S., provides in part as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; * * *"

None of the foregoing statutory provisions, or other similar provisions in the statutes, contain any express authority to the county court to rent space for the sole use and benefit of county officials. Section 49.270, which grants authority to the county court to lease property, limits such authority to a lease which is made "for the use and benefit of the county", and in any event the authority so granted must come within the scope of the specific powers provided for in the other sections of the statute.

Absent express authority conferred by statute, there is no power to rent space to provide a parking area for county officials unless such power could be implied from the powers expressly granted. The law, as to implication of power, is stated in Everett v. County of Clinton, 282 S. W. 2d. 30, 1.c. 37 as follows:

"* * *If such power exists, it must be looked for among those powers which can be implied only as being essential to effectuate the purpose manifested in an express power or duty, conferred, or imposed upon the county by statute. If such a power exists, it must be one related to the subject with which the county has authority to deal in discharging a duty imposed by law. * * *(Emphasis ours).

This principle was stated in Blades v. Hawkins, 133 Mo. App. 328, 112 S. W. 979, 1.c. 981 as follows:

"* * *Hence, if this authority existed in the present instance, it was because the law implied it as essential to the due exercise of powers specifically vested in the courts by statute or the performance of a duty specifically required

of said tribunals. The courts are conservative in implying powers not expressly given. One limitation imposed by law on these implications is that no power will be implied to belong to a public corporation unless it is cognate to the purpose for which the corporation was created.* * *

In the cases in which the county court was held to have implied power it clearly appeared that such power was essential to the proper exercise of the express power granted or was necessary to be inferred from the granting of such power. Thus, in Walker v. Linn County, 72 Mo. 650, it was held that the county court, which had the control and management of the county property and the power to alter, repair, or build county buildings, had the duty to take such measures as should be deemed necessary to preserve all buildings and property of the county and that duty carried with it the power to enter into a contract to insure the buildings.

In Ewing v. Vernon County, 216 Mo. 681, 116 S. W. 518, the court held that the county court was required to furnish necessary janitorial services for the office of the county recorder, such services being in the furtherance of the public interest. In Shiedley v. Lynch, 95 Mo. 487, 8 S. W. 434, the court held that the power to erect a courthouse included the power to buy land for a courthouse site. And in State ex rel. Wahl v. Speer, 284 Mo. 45, 233 S. W. 655, 1.c. 660, the court held that the statute which empowered a county to incur a debt to build a courthouse impliedly granted power to expend part of the money in the purchase of additional ground for a site, ground to enlarge the old site and render it suitable for the proposed building.

In all of the foregoing and numerous other cases the court makes clear that the power which is implied is within the scope of the express powers or essential for the purpose of carrying out such express powers. And in each instance, the interest of the county was served rather than the interest of a particular individual or individuals.

It is true that in modern society automobiles have become reasonably necessary in providing transportation. It is equally true that parking areas have become necessary for the proper functioning of the daily movement of the population in motor vehicles. In former days, hitching posts and rails were maintained on public highways in the interest of the public in attending to business at the county offices. Parking facilities have replaced such hitching posts and rails. Our statutes must be construed in the light of modern conditions and the society in which we live. However, it is not the function of the courts, and certainly not of this office, to attempt to amend the statutes in the guise of construction.

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The question then, is whether it may reasonably be held to be for the "use and benefit of the county" in carrying out the powers expressly granted to the county court for the county court to provide parking areas for the exclusive benefit of county officials who choose to utilize their automobiles for the purpose of transporting themselves to their offices.

The duties of the county officials can be carried out efficiently whether or not such parking space is provided. The manner of transportation utilized by the official is in no way related to the proper functioning of his office or the performance of his duties. While it may be true that the official would not derive any substantial personal benefit from the parking space in any realistic view of the case, nevertheless there is some personal benefit, and no real benefit to the county as such.

If the county could be held to have the power to rent space for the sole purpose of providing such parking facilities, it should follow that the county could rent space in a private garage for the use of the official, or could provide funds for the purpose of paying parking meter charges incurred by such official. We do not believe that the county court has such power. If the county has the power to provide parking space on the theory that the officials are required to utilize automobiles to attend to their offices, it would reasonably follow that the county could provide motor vehicles to be utilized by the officials for such purpose. Again, we do not believe that the county has such power.

It is only where such automobile, or the use thereof, is reasonably necessary to the efficient performance of the duties of the particular officer rather than simply as a means of attending the place where the duties are to be performed, that the county could properly be held to have the power to provide parking space for such automobiles.

CONCLUSION

It is the opinion of this office that the county court of Cape Girardeau County has no power or authority to rent parking space for the use of county officials while attending to their duties at the county courthouse.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General