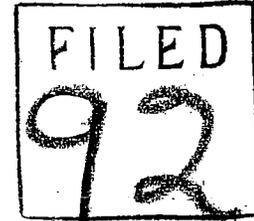


COUNTIES:

COUNTY COURT:

County Court may lease out real property of county for short periods but may not enter into a lease for a term of 99 or 20 years.

July 28, 1961



Honorable Harold L. Volkmer
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Volkmer:

This office is in receipt of your recent request for an opinion which reads as follows:

"I am requesting that your office furnish me with an opinion on the questions arising out of the following matter.

"Marion County owns a building and tract of land of approximately two hundred and fifty acres at Palmyra, Missouri. The building was formerly used as the County infirmary and is now leased on a yearly basis to a private individual, who operates a nursing home in the building. At the present time the approximately two hundred and fifty acres are used by the lessee of the rest home building to raise crops. However, the Marion County Court has been approached by individuals requesting that they be permitted to lease the ground on a long-term lease of at least twenty years and perhaps ninety-nine years. The lease would be for the purpose of constructing a factory building on the land and the leasing of the building by the individuals to industry to be located in Palmyra.

"It is also my understanding that if the County Court is not able to enter into any such long-term lease, they may wish to sell the land without the building.

"The questions presented for which I am requesting your opinion are as follows:

Honorable Harold L. Volkmer

"1. Whether or not a County Court in a third-class county can enter into a lease with an individual, individuals, or a corporation for the leasing of real estate owned by the County for a period of more than one year, and if so, what period of years.

"2. What procedure must a County Court follow in order to sell county-owned land.

"I would appreciate a prompt reply to this request."

Section 49.270, R.S. Mo. 1959 provides:

"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; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Although that statute gives the county court "authority to . . . lease," this office is unwilling to read the statute as empowering county courts to dispose of real property by long term leases. The context of the above quoted phrase would indicate a legislative intent to permit counties to acquire land by lease but not necessarily to dispose of it in that manner. It should be noted that "lease" is sandwiched between the phrases "to purchase . . . or receive by donation." In the next clause of the cited section, the county court is empowered "to sell and cause to be conveyed any real estate. . . appropriating the proceeds of such sale to the use of the" county. (Emphasis added.)

Short term rental agreements whereby the county court permits private individuals to occupy and use county owned land for a consideration are valuable sources of income for the county, and we have little difficulty in finding them to be consistent with the legislative intent manifested in the words, "The said court shall have control and management of the property, real and personal, belonging to the county. . ." From these words as well as from judicial pronouncements concerning the

Honorable Harold L. Volkmer

functions and powers of county court, Odell v. File (Mo. Sup. 1953) 260 S.W. 2d 521, 527, Butler County v. Campbell (Mo. Sup. 1944) 182 S.W. 2d, 589, 591-592, it is clear that these bodies are charged with the stewardship of county owned property and are authorized to do what is necessary to carry out this task. That short term rental agreements may occasionally be the most expeditious manner of fulfilling this duty, with respect to a particular piece of land, cannot be disputed.

In Aslin v. Stoddard County (Mo. Sup. 1937) 106 S.W. 2d 473, the contention was made that a contract to employ a court-house janitor was void because it had been entered into by a county court on the last day of the term of office of two of its three members and was to run for one year thereafter. After observing that, l.c. 475, "the county court is a continuing body--not a succession of different boards or 'courts';" the Supreme Court upheld the contract saying, l.c. 475:

"Many contracts, proper enough and reasonable as to 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."

The Court continued, l.c. 477:

"In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold."

In 20 C.J.S., Counties, Section 170, we find the statement that a county court may not enter into a lease of county property "unless expressly or impliedly authorized to do so, as where they are given control of county property; . . ." Section 49.270, supra, expressly gives the court "control and management" of county property.

Honorable Harold L. Volkmer

However, a lease by which a county deprives itself of the use of land belonging to it for ninety-nine years or even twenty years may not reasonably be placed in the same category as those discussed above. Such an arrangement is tantamount to a permanent deprivation of possession which the legislature has directed will be by sale.

The above cited section of Corpus Juris Secundum expresses another limitation on the power of the county court to lease out county property, viz., that the temporary dispossession of the property be consistent with the public use the county has or will have for the property. This rule was stated by the Georgia Supreme Court in Killian v. Cherokee County (Ga. 1929) 150 S.E. 158 wherein the power of counties to lease out land was considered. There the court said succinctly, l.c. 171, "The county board cannot, in the absence of statutory authority, make a lease of any part of the county property used or useful for county purposes."

The same principle was set out in Minimax Gas Co. v. State ex rel. McCurdy, (Ohio, App. 1929) 170 N.E. 33, which was brought to eject defendant gas company from certain real property it occupied pursuant to a lease entered into with the county. Under the terms of the lease, the county had the right to cancel at will and had notified the defendant that it was exercising its prerogative. When the defendant failed to vacate, suit was brought.

In discussing the inherent power of a county to enter into such a lease, the court said, l.c. 35-36,

"Other counties have found it convenient and profitable to temporarily lease property for which there was no immediate need, and we hesitate to unequivocally condemn a practice that properly carried out results in even a slight public advantage. Moreover, it appears a forced interpretation to say that the General Assembly, in regulating the sale of county real estate for which the county has no use, intended to inhibit the leasing of property which the county could not sell. This appears to us not only a strained construction, but one not necessary to fully protect the public interests. Until the commissioners find that county real estate is 'not needed for public use' all such property must be deemed of some potential use to the county. So long as it has such potential use, the interests of the county do not require its sale, nor does section 2447 permit its sale.

Honorable Harold L. Volkmer

In the absence of a finding that would enable the commissioners to sell, title must be retained by the county, but, under the doctrine of the Reynolds case, supra, there is no reason why it should not be temporarily leased, subject to repossession whenever the public needs so require."

Therefore, the permissible duration of a lease granted by a county will be governed by the needs of the county as to the land that is leased; and a lease may not be for such a term of years as to prohibit the county from applying it to a public use within a reasonable time, if such a need should arise.

In response to your second query, the procedure to be followed for a sale of real property by a county is set out rather clearly in Section 49,280 which provides:

"The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate which the county may then have in or to the premises so conveyed."

Other matters relating to such a sale were extensively treated in a prior opinion of this office prepared at the request of Mr. Charles E. Murrell, Jr., and forwarded under date of March 19, 1951. A copy of that opinion is enclosed herewith. Your attention is also invited to another opinion, also enclosed, issued at the request of Hon. J. R. Gideon on February 18, 1949.

CONCLUSION

It is the opinion of this office that, while county courts may properly enter into leases for periods up to several years depending on the requirements of the particular situation, they do not have authority to dispossess the county of real property by leases for terms of twenty or ninety-nine years. If the county court desires to effect such a transfer, it must be

Honorable Harold L. Volkmer

accomplished by sale of the property in accordance with applicable case and statutory law.

This opinion which I hereby approve, was prepared by my assistant Mr. Albert J. Stephan, Jr., Assistant Attorney General.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:BJ