COUNTY COURT:
COUNTY CLERK:
PAYMENT OF WARRANTS:
COUNTY RECORDS:

A contract made with a county court for services to be rendered the county must be in writing subscribed by the parties thereto with the consideration stated therein and entered on the records of the county court.

February 8, 1962

FILED
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Honorable Earl R. Blackwell
State Senator, 22nd District
Hillsboro, Missouri

Dear Senator Blackwell:

In your letter of October 16, 1961, you request an opinion from this office regarding the matter set forth in a letter you enclosed, which letter reads as follows:

> "Recently the County Clerk of Jefferson County presented a statement to the Court for services which he performed for the Court, and at the request of the Court; however, a question has been raised concerning the authority of the Court to honor the statement of the County Clerk.
>
> "The Court would like for you to obtain an opinion from the Attorney General based on the following facts:
>
> On November 8, 1960 the voters of Jefferson County, by majority, voted favorably for the Proposition of Local Option Registration of Voters, as provided by Chapter 114 RSMo 1959, and with this mandate in mind, the same to become operative starting September 15, 1961, the County Court did on December 19, 1960 enter the following order in the County Court Record No. 20 at Page 383:

"ELECTIONS
Dividing Townships for
Voters Registration
Sec. 111.220 and 114.110
RSMo 1959

Now on this day the Court orders the Clerk to divide the several Townships into election precincts with fixed boundaries for each precinct.

"And, in accordance with said Order, the Clerk proceeded to divide the seven Townships of Jefferson County into election precincts, employing as fixed boundaries the center lines of County and State Highways, Creeks and Rivers, Railroad Rights of Way, and in some instances, section and Survey lines.

"Diligently applying his effort to this project, during after-office hours, on Sundays and Holidays, and during his vacation period, and by attending fifty-eight organization meetings in the County in search of suggestions by the various organizations for equitable distribution of precincts in each Township, the Clerk did on or about September 1, 1961 submit to the County Court seven master maps of the seven Townships of the County defining sixty-two precincts with fixed boundaries encompassing each precinct.

"The County Court, after viewing said Township maps accepted same as the official precinct maps of the County, and starting on September 15, 1961, the County Clerk employed the same maps in registering voters in the sixty two precincts in the County.

"Later, on or about September 29, 1961 the Clerk presented a statement to the County Court for his services in dividing the seven Townships into sixty-two election precincts in the sum of $3300, which statement was approved for payment by the Presiding Judge and the Associate

Judge of the 2nd District; the Associate Judge of the 1st District declined to vote.

"The Presiding Judge signed Warrant No. 1158 for payment of said statement to be paid from the Registration and Election category of the 1961 Budget, where ample funds are available but the County Auditor has refused to approve said Warrant for payment without a legal opinion from the Attorney General of Missouri.

"QUERY NO. 1:

Does the County Court have the authority to expend County funds for work delegated by a County Court order to the County Clerk in accordance with the provisions of Section 111.220 RSMo 1959, and as a part of the program for Registration of Voters as provided by Chapter 114 RSMo 1959?"

In substance, it is stated in the letter that on November 8, 1960, the voters of Jefferson County voted favorably for county-wide registration of voters as provided for under Chapter 114, RSMo 1959. On December 19, 1960, the county court of Jefferson County entered the following order in County Court Record No. 20, page 383:

"ELECTIONS
Dividing Townships for
Voters Registration
Sec. 111.220 and 114.110
RSMo 1959

Now on this day the Court orders the Clerk to divide the several Townships into election precincts with fixed boundaries for each precinct."

It is further stated that in accordance with said order the county clerk of Jefferson County proceeded to divide the seven townships of Jefferson County into election precincts employing as fixed boundaries the center lines of county and state highways, creeks and rivers, railroad rights-of-way, and in some instances sections and survey lines. After

attending many meetings in search of suggestions from various organizations for equitable distribution of precincts in each township, he prepared seven master maps of the county, defining sixty-two precincts with fixed boundaries, and that the county court after viewing the maps accepted the same, and these maps were used later for registering voters. Thereafter on September 29, 1961, the county clerk presented a statement to the county court for $3300.00 for his services in dividing the seven townships into precincts, which statement was approved for payment by the presiding judge and one associate judge. It is further stated that the county auditor has refused to approve the warrant for payment.

It must be observed that this matter concerns an obligation created by a county court and its validity must depend upon statutory authority.

Section 431.100, RSMo 1959, provides as follows:

> "If a claim against a county be for work and labor done, or material furnished in good faith by the claimant, under contract with the county authorities, or with any agent of the county lawfully authorized, the claimant, if he shall have fulfilled his contract, shall be entitled to recover the just value of such work, labor and material, though such authorities or agent may not, in making such contract, have pursued the form of proceedings prescribed by law."

Section 432.070, RSMo 1959, provides:

> "No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

Attention is called to the fact that Section 431.100, supra, applies only to claims against the county under a contract with county authorities while Section 432.070, supra, applies to counties, cities, school districts, and other municipal corporations. This fact should be kept in mind when construing the holdings made in cases cited in this opinion.

These statutes cited above have been before the courts of this state many times for construction, both in cases involving counties as well as cities.

In Woolfolk vs. Randolph County, 83 Mo. 501, the court had before it a situation where the county court by proper order of record had appointed plaintiff as its agent for and on behalf of said county to compromise and settle the bonded indebtedness of Sugarcreek Township in Randolph County. By the terms of said court order plaintiff was to receive a reasonable compensation for his services. Plaintiff performed the services and presented his bill to the county court amounting to $700.00. The Supreme Court held in this case that plaintiff was not entitled to recover because the above statutory provisions had not been complied with. The court stated, l.c. 506:

> "The petition sufficiently discloses, we think, that the contract sued on did not meet the requirements of the statute, that it was not in writing, dated and signed, as required, and that the value of plaintiff's services was not agreed upon. The allegation is, that plaintiff was to have a reasonable compensation, which is the compensation the law would ordinarily attach where the parties fail to make a contract price, and this, we think, for the reasons given, was not a compliance with the statute, in this essential particular."

In the case of Carter vs. Reynolds County, 288 S.W. 48, the presiding judge of the county court of Reynolds County met with plaintiff, an experienced bridge builder, at a bridge site and orally agreed with plaintiff on how the work should be done in constructing a bridge. Compensation to be paid for the work was agreed upon subject to the approval of the county court. Thereafter the county court made an order of record that the county would pay or contribute a sum not to exceed five hundred dollars after completion and approval by the county court of such work. Thereafter the presiding judge wrote plaintiff a letter stating the court had made an

order to pay five hundred dollars when the work was completed and approved by the court, and further stated that if this arrangement was satisfactory with plaintiff that he could proceed with the work. Plaintiff did perform the work and presented his bill for services, which was refused for payment. After quoting the above cited statutory provisions the Supreme Court made the following statement, l.c. 50:

> "[1-4] That the evidence wholly fails to show a contract between plaintiff and Reynolds county conforming to the requirements of section 2164 is manifest. Confronted with this situation, appellant places his reliance on section 9507. But before this latter section can avail him, he must show that the work and labor was done, and the material furnished, under a contract with the county. What is the proof of the existence of a contract? The parol evidence must be eliminated. A county court can speak only by its record; and this is true with reference to all its acts, whether judicial or ministerial. Riley v. Pettis County, 96 Mo. 318, 321, 9 S.W. 906, Sanderson v. Pike County, 195 Mo. 598, 604, 93 S.W. 942; Harkreader v. Vernon County, 216 Mo. 696, 706, 116 S.W. 523. The letter written by Judge George is not a record of the county court; it is the merest hearsay. The only competent evidence offered on the issue of contract or no contract was the record entry of an order of the county court. From that order it appears that the county offered to 'contribute not to exceed $500 after completion and approval of the county court' of 'something * * * to change the flow of water in Black river at the Carter's Mill bridge.' This offer was so vague and indefinite that it could not be made the basis of an enforceable contract. Certainly proof of it does not tend to establish the contract pleaded.
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> "[5] George's agreement with the plaintiff was not binding upon Reynolds county. He was not an agent of the county 'duly appointed and authorized in writing'; being merely a member of the county court did

> not constitute him an 'agent authorized by law' to make contracts for the county. If all three of the judges of the county court had separately agreed with plaintiff that the county would pay him $500 for driving piling in Black river, the county would not be bound. They could act for and obligate the county only when sitting as the county court. Crutchfield v. Warrensburg, 30 Mo. App. 456; Board of Commissioners of Cass County v. Ross, 46 Ind. 404; McDonald v. Mayor, 68 N.Y. 23, 23 Am.Rep. 144; Butler v. City of Charleston, 7 Gray (73 Mass.) 12.
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> "[6] The cause of action pleaded in the second count of the petition is on a quantum meruit. The statute, in prescribing the mode by which alone a county can obligate itself by contract, negatives the idea of a promise on its part arising by implication of law. The defendant cannot be held as on an implied contract. Crutchfield v. Warrensburg, supra; Hillside Securities Co. v. Minter, 300 Mo. 380, 254 S.W. 188."

In the case of Cook vs. St. Francois County, 162 S.W. 2d 252, the Supreme Court had before it a situation where St. Francois County had made the following order of record on February 20, 1939, which reads as follows, l.c. 253:

> "'In the matter of the appointment of Mrs. Blanche Cook, County Health Nurse.
>
> "'Now on this day it is ordered by the court that Mrs. Blanche Cook, of Flat River, Mo., be and is, hereby appointed County Health Nurse at a salary of $200.00, per month from October 1st, to June 1st, and $150.00, per month from June 1st, to September 1st.
>
> "'It is further ordered that appointment to go in effect March 1, 1939.'"

On March 27, 1939, at the same term of court the county court made of record another order revoking and setting aside the prior order of appointment for reasons stated in said order. Apparently Mrs. Cook was paid her salary for the month of March but was not paid thereafter. She then brought

this action to recover her salary from April, 1939, until September, 1939, relying upon the agreement she had with the county. In deciding this matter the Supreme Court made the following statement, l.c. 254:

> "[2] If appellant's cause of action rests upon a contract of employment, she is barred from recovery by Section 3349, Revised Statutes Missouri 1939, Mo. R.S.A. § 3349, which requires such a contract to be in writing and subscribed by the parties. The county court spread its order upon the record, but appellant filed no written acceptance of the order. On her part the contract, if any, was oral."

In the case of St. Francois County vs. Brookshire, 302 S.W. 2d 1, the defendant had been employed as an attorney to represent the county court in a contempt proceeding brought against the members of the court in the circuit court, and later the defendant represented the members of the court in a habeas corpus proceeding in the court of appeals. The members of the county court orally employed the defendant to represent them. Defendant performed his services and was paid a fee of six hundred dollars by the county for services rendered. About four years later the county brought suit against the defendant to recover the six hundred dollars that had been paid him on the theory the money had been illegally paid for the reason that the services he rendered to the members of the court were services rendered to them as individuals. After holding the county court had no authority to employ defendant as an attorney for the county under the circumstances of this case, the Supreme Court then made the following statement, l.c. 4:

> "[6,7] There is an additional reason why the purported employment of defendant in this case by the county was not authorized and the payment of his fee was in violation of law. We deem it advisable to comment upon the matter even though it is not mentioned by either party in the pleadings or briefs. Section 432.070 provides that 'No county, city, * * * or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, * * * and such contract, including the consideration, shall be in writing and dated

> when made, * * *.' It is defendant's contention that the arrangement between him and the members of the county court constituted a contract of employment, but there is no contention that this contract, including the consideration, was in writing. The evidence establishes the contrary. The requirements of Section 432.070 that the terms of the contracts therein mentioned be in writing is mandatory and not merely directory, Donovan v. Kansas City, Missouri, 352 Mo. 430, 175 S.W. 2d 874[10], 179 S.W. 2d 108, and a verbal contract in violation of this statutory provision is void ab initio and cannot be rendered valid after the services are performed or work done. Fleshner v. Kansas City, Missouri, 348 Mo. 978, 156 S.W. 2d 706 [3]; Likes v. City of Rolla, 184 Mo. App. 296, 167 S.W. 645 [1]. One dealing with a municipal or county government must take notice of the limitations on the power and authority of the representatives with whom he deals, Arbyrd Compress Co. v. City of Arbyrd, Mo. App., 246 S.W. 2d 104[4], and one of those limitations is the lack of authority to enter into an oral contract. In this case the employment of defendant as attorney for the county was not within the scope of the powers of the county court and was not authorized by law, but even if it had been, the contract of employment would have been void as in violation of Section 432.070.

In State vs. Miller, 297 S.W. 2d 611, two of the county judges had already agreed with plaintiff to pay him $500 for earth moving and construction work for Andrew County, Missouri. This agreement was made when the county court was not in session and no entry of it was made on the records of the county court until several days after the agreement was made and at a time when the court was not in session. Plaintiff performed the work and presented his bill for services, which was approved by two judges, but the presiding judge refused to sign a warrant. This proceeding was in mandamus to compel the presiding judge to sign the warrant. In this proceeding plaintiff contended that the agreement was made by a majority of the county judges and that he, having performed the

services in good faith, is entitled to recover for his work even though the contract was not executed in the form prescribed by law and was not in writing, relying on the provisions of Section 431.100.

In holding that plaintiff was not entitled to recover, the court stated, l.c. 614:

> "[1,2] How do the foregoing facts conform to the requirements prescribed by the law to safeguard the funds of the county? In the first place the law requires such contracts to be in writing. Section 432.070. Absent the required writing, such contracts 'have been held void and performance by the other party ineffectual to create legal liability on the political subdivision on the theory of ratification, estoppel or implied contract [citations].' Elkins-Swyers Office Equipment Co. v. Moniteau County, 357 Mo. 448, 456, 209 S.W. 2d 127, 131. See, also, Carter v. George, 216 MO.App. 308, 264 S.W. 463; Cook v. St. Francois County, 349 Mo. 484, 162 S.W. 2d 252, 254; Missouri-Kansas Chemical Co. v. Christian County, 352 Mo. 1087, 180 S.W. 2d 735, 736. One dealing with the county is deemed to know of such restrictions imposed by law on such transactions. Riley v. City of Rock Port, MO. App., 165 S.W. 2d 880; Hillside Securities Co. v. Minter, 300 Mo. 380, 254 S.W. 188, 193."

The court further states, l.c. 615:

> "[5] As to Walton's right to recover under Section 431.100, assuming he performed the work in good faith, it has been held that that section applies only to proceedings 'where the parties have not followed the required form of procedure in executing a contract' with the county and 'affords no relief where the parties have failed to follow the conditions imposed upon the making of a contract'. Missouri-Kansas Chemical Co. v. Christian County, supra. At page 737 of 180 S.W. 2d, the court further said:

> 'We have held that this section does not give the claimant a right to recover where he has performed under a contract with a county official if such official is not authorized by law to make the contract'."

Mention should be made of the case of Burger vs. City of Springfield, 323 S.W. 2d 777. In this case the City Council of Springfield, Missouri, by resolution duly enacted and signed by its Mayor, authorized the waterworks committee to employ a suitable person to represent the city in negotiating the purchase of the waterworks, a private company, at a reasonable compensation for services and expenses to be fixed by the City Council upon completion of the services. The Mayor, who was also a member of the waterworks committee, wrote the plaintiff a letter enclosing a copy of the resolution of the City Council and informed him that he had been appointed to represent the city at a reasonable fee, to be determined after the work was completed. Plaintiff by letter accepted the appointment as the negotiator for the city. The plaintiff was able to successfully negotiate the purchase of the water company for several million dollars less than the original asking price. Thereafter the city refused to pay plaintiff for his services and suit was instituted on the contract. In disposing of the case the court stated, l.c. 781:

> "It appears, therefore, that the contract sued on in this case was in writing. The resolution in question was pleaded. The resolution is alleged to have been duly adopted by the City Council, approved by the Mayor and duly signed, and a copy was attached to the amended petition. Notification of appointment and acceptance thereof were alleged to have been in writing and copies of the signed letters were attached. The formal execution of the contract was sufficient. Only the sufficiency of the written provision of the documents appear to be in question." (Emphasis supplied)

The offer of the city was made in writing and it was accepted in writing. The court held this constituted a written contract. The only question was whether the written provisions in the contract that the city would pay "a reasonable compensation" complied with Section 432.070, which required the consideration to be in writing. The court

held the written contract stated the consideration and did comply with this statute. In the instant matter there is no contract in writing between the parties and consequently no consideration is stated.

It is apparent from the cases cited herein that recovery cannot be had under Section 431.100 unless it is founded upon a written contract with a stated consideration and signed by the parties thereto.

It is apparent from the cases cited herein that liability on the county can be created only by a written contract under Section 431.100, supra, or under Section 432.070, supra, and that Section 431.100 applies only when the parties have executed a written contract but may not have followed the required formal procedure leading up to the execution of a written contract. We also believe that the above cited cases are authority for holding that the written contract must state the consideration and be subscribed by the parties thereto and entered upon the records of the county court.

Under the facts submitted in the present matter there was no contract in writing subscribed by the parties thereto and entered upon the records of the county court. The one-sentence entry made by the county court on the court records does not constitute a written contract as required by statute.

CONCLUSION

It is our opinion that under the facts submitted herein the agreement made by the county court with the county clerk as stated herein does not create a valid legal obligation on Jefferson County due to the fact that it was not in writing with the consideration stated therein and was not subscribed by the parties and entered on the records of the county court as required by the law.

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

Yours very truly,

MM:BJ

THOMAS F. EAGLETON
Attorney General