

October 12, 1964



Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County
Courthouse
Mexico, Missouri

Dear Mr. Levvis:

This letter is written in response to your letters of request for an official opinion dated June 18, 1964, and June 24, 1964, relating to claims against the County Clerk, the County Assessor, and former County Coroners as determined by the State Auditor.

We wish to express to you our views and comments respecting the problems presented.

1. We are of the view that the Prosecuting Attorney is not such an interested party as to disqualify him from acting on behalf of the county in determining the legal questions which are presented.

2. We do, however, understand that for a variety of personal reasons the Prosecuting Attorney may prefer not to act in the matter and may wish to decline to act on behalf of the county in the matter. If the Prosecuting Attorney does decline to act, the County Court could employ special counsel under the provisions of Section 56.250, RSMo 1959, to represent the county in this matter. We are enclosing an opinion issued by the Attorney General under date of May 28, 1957, to Alden S. Lance, which discusses the authority of the County Court under such section.

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3. With respect to the questions of liability of the officers and the application of the appropriate statute of limitations, we believe that the courts should determine these questions. The State Auditor, at the time of the audit, made his determination of these questions and if the officers involved questioned the correctness of that determination, then we think the courts should make the final determination of these legal questions. We note, however, in passing, that if the officers involved, or their successors, are continuing to claim fees contrary to the determination of the State Auditor, then there could be liability thereon up to the present time. This, we think, presents a ripe issue for determination by the courts, either by suits against the officers for recovery or by declaratory judgment actions.

We hope this adequately explains our views regarding the matters presented.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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Enclosure