

COUNTY COURTS: County courts may execute leases for
LEASES: several years providing current and
COUNTY CONTRACTS: surplus funds on hand will be adequate
CONSTITUTIONAL LAW: to pay their obligations under the
BONDS: lease. Such lease could be funded by
PUBLIC CONTRACTS: bonds if authorized by popular vote
under Section 26(b) Article VI, Missouri
Constitution 1945. County courts may
execute a lease for multiple years that would be binding on
succeeding courts, providing the contract is not for an unrea-
sonable term or is in bad faith or fraudulent.

November 9, 1965

Opinion No. 304

Honorable Gerald Kiser
Prosecuting Attorney of Clay County
Court House
Liberty, Missouri



Dear Mr. Kiser:

The opinions expressed herein are in response to the questions which you submitted as follows:

- "1. Does the county court have the authority to enter a lease for county office space wherein the county leases said space and contracts to pay rent for a period of more than one year?
- "2. If such a lease by the county court would be invalid can such a lease (for more than one year) be submitted to the voters and thereby the expenditure of rent for future years be authorized pursuant to Section 26(b) of Article VI."

In a subsequent telephone conversation between you and a member of this office, you stated that the court house had become very crowded due to the requirements of an additional circuit judge and other necessary expansions. The county court is attempting to plan some measure they could use as an alternative to meet the pressures of the required expansion. You stated one alternative (which is the hypothetical case here) would be for the county court to lease property and modify the space to suit the immediate needs of the county. One aspect being considered was to execute a long-term lease of 25 years or more.

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It is the validity of such a lease for such a term that this opinion is primarily concerned.

Section 26(a), Article VI, of the Missouri Constitution, reads as follows:

"No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

The pertinent statutes read as follows:

Section 49.510, V.A.M.S.

"It shall be the duty of the county to provide offices or space where the officers of the county 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 50.660, V.A.M.S.

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment, or services other than personal made by the officer in charge of purchasing in any county having such officer. No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise

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unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating; * * *

Section 432.070, V.A.M.S.

"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."

It is apparent under the statutory provisions set forth in Section 49.510, V.A.M.S. that the county does have an obligation to furnish office space to county officers. As a matter of fact, in the case of Buchanan v. Ralls County, 222 S.W. 1003, the Supreme Court held that where the county failed to provide the treasurer with an office, the county was bound to pay the reasonable cost of such an office, janitor service, etc. provided by the treasurer.

However, the short answer to your first question is in the negative. In the case of Ebert v. Jackson County, 70 S.W. 2d 918, 919, the court considered a four-year lease to the county to be used as a justice's court room in the county which was payable monthly in advance. The court stated as follows:

"Defendant admits such authority. However, it challenges the contract as in violation of section 12, art.10, of the Constitution, which follows: 'No county * * * shall be allowed to become indebted in any manner or

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for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting * * * at an election to be held for that purpose.
* * *

"It contends that said contract created a debt within the meaning of said section, and also contends that the contract is an effort to anticipate the income and revenue of the county for several years following the year the contract became effective. In considering said section of the Constitution in Book v. Earl, 87 Mo. 246, loc. cit. 252, we said: 'The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

"And in Trask v. Livingston County, 210 Mo. 582, loc. cit. 594, 600, 109 S.W. 656, 659, 37 L.R.A. (N.S.) 1045, we also said:

"'It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created and prohibits the anticipation of the revenues of any future year. Any other construction would render section 12 of article 10 nugatory; for, if the county court of Livingston county in September, 1889, could

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anticipate the revenue of 1890, it could also anticipate the revenues of 1891 and 1892, and would leave the power of the county, with reference to indebtedness, what it was before the Constitution of 1875 was adopted. * * *

"Clearly the county court was not authorized to appropriate revenues, which were to be derived from taxation in the year 1890, when such taxes had never been assessed, levied, or collected. While the county court may in any one year draw warrants, after the revenue has been provided, and the taxes levied within the scope of the levy and income for such year, it is too plain for argument that the Constitution forbids the anticipation of the revenues of any subsequent years. If not, all that has been said in regard to the force and effect of section 12 of article 10 of the Constitution, to the effect that its purpose was to put counties upon a cash system, instead of the old credit plan, has been in vain."

* * * * *

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional promise made by the county on July 18, 1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose.

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the contract became

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effective. It created a debt within the meaning of said section of the Constitution, and is void."

The apparent reasoning is set forth in Missouri Toncan Culvert Co. v. Butler County, 181 S.W. 2d 506, 507, as follows:

"* * * Constitutional safeguards for the protection of the people's money are not to be circumvented in such manner. They were enacted for a wholesome purpose and should be strictly enforced. All are bound to take notice of such safeguards. While this constitutional provision impliedly authorizes the fiscal agents to anticipate the revenue of the current year in the administration of the county's affairs, it explicitly forbids the anticipation of revenues for any future year, a forbidden act which the named fiscal agents admittedly sought to override. Trask v. Livingston County, 210 Mo. 582, 594, 600, 109 S.W. 656, 659, 660, 37 L.R.A. 1045; Ebert v. Jackson County, Mo. Sup., 70 S.W. 2d 918, 919 [2]; Hawkins v. Cox, 334 Mo. 640, 648 [3], 66 S.W. 2d 539, 543 [3-5]. These and other cases recognize and enforce the constitutional intent to abolish the credit system and to put counties and other political subdivisions on a cash basis by limiting the legal expenditures of any given year to the income and revenue of that year in the absence of some special authorization."

This position was affirmed in State ex rel. v. Cribb, 273 S.W. 2d 246.

Your second question whether a lease for multiple years can be submitted to the voters and the expenditure for rent authorized pursuant to Section 26(b), Article VI of the Missouri Constitution, has been carefully considered. This office sees no objection to such a procedure assuming that the issue of bonds to secure the additional money to pay for the lease is properly submitted to the people to be voted upon as provided in Section 26(b), Missouri Constitution 1945, subject to the limitations discussed hereafter. A caveat is noted at this time that if such an issue were submitted to the people, and the people did vote affirmatively upon the funding for the lease, the funds so secured could not thereafter be converted for any other purpose other than that for which the people voted. It has been so held by this office in an Opinion No. 10, of the Attorney General, Bowsher, April 29, 1953, which is attached.

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Implicit in the above comments is a legal question whether the county court can execute a contract or lease covering multiple years, assuming the availability of current and/or surplus funds on hand. This office has so held in the Opinion No. 62, of the Attorney General, Milfelt, December 28, 1961, a copy of which is attached.

This view is predicated upon the fact that the county court has been held to be a continuing body which is responsible for the administration of the county business. This issue was rather extensively discussed by the Supreme Court in *Aslin v. Stoddard County*, 106 S.W. 2d 472, 474, et seq. The extracts of the opinion are set out below:

"I. By statute, sections 2072 and 2073, RSMo 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 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.'"

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"No case from this state is cited nor have we found any directly adjudicating the precise question now under consideration, viz., whether the county court may lawfully make a contract, binding upon the county (assuming good faith in the making thereof and reasonableness as to time of performance), the performance of which will extend beyond the terms of office of part or all of the members of the court as then constituted. * * *"

* * * * *

"* * * 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. To illustrate:

"In Walker v. Linn County, 72 Mo. 650, the county court, through an appointed agent, insured county property for a period of five years. Point was made, on demurrer, that the court had no power to make the contract. This court held that the county court, under its statutory authority to 'have the control and management' of the county's property and its statutory duty to 'take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage,'

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had the implied authority to insure the buildings belonging to the county. The contract was held valid. The question of the time of performance as extending beyond the terms of office of the then members of the court was not raised and was not discussed in the opinion, and that case therefore can hardly be considered authority one way or the other on the point we now have under consideration. But, if thought of at all, the time factor must have been regarded by the court as not affecting the validity of the contract. And, whether considered or not in that case, can it be doubted that the county court, empowered to insure the county property, could lawfully make a contract for insurance extending beyond the terms of office of its then members, if such contract was made in good faith and was (perhaps because of a lower annual premium than for a short period) advantageous to the county? We think not. Other illustrations might be given. 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."

A limitation is imposed on the execution of a contract by the county court covering several years in that the contract should not be unreasonable as to the term nor constitute a fraud or be in bad faith as a matter of law under the facts.

It appears to this office that the county court might well execute a contract covering a period of two to five years (assuming validity in other areas) without too much question. It could possibly execute a valid contract for ten years depending on the particular facts. However, it would appear that a lease in excess of twenty-five (25) years executed by the county court is considered an unreasonable exercise of power under the facts. These comments, of course, would vary from case to case and would depend upon the judgment of the court as applied to the facts immediately involved in each particular case.

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The questions you submit are particularly difficult to answer with any definiteness or certainty inasmuch as they are based upon a hypothetical situation. We do not have the proposed lease at hand nor is there any certainty as to the facts. Consequently, the opinions expressed by this office in relation to this matter must be unconditionally qualified, and are based upon the questions submitted and the hypothetical facts.

CONCLUSION

It is the opinion of this office that:

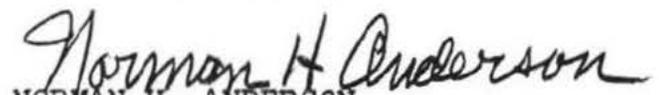
(1) A county court may execute a lease covering several years, payable monthly in advance, where such obligation together with other expenses of the county does not exceed the constitutional prohibition under 26(a), Article VI, Missouri Constitution against an indebtedness larger than the estimated year's income, and available surplus funds on hand.

(2) Under Section 26(b), Article VI, Missouri Constitution, the people of the county could vote a sum of money by issuance of bonds in excess of the amount authorized for expenditures under Section 26(a), Article VI of the Missouri Constitution to fund the execution of a lease. This money so authorized must be expended for that limited purpose.

(3) The county court may execute a valid contract for a short term which would be binding on succeeding courts providing such contract is not unreasonable as to the term of the contract, in bad faith or fraudulent. It is the opinion of this office that a lease to secure space for county offices covering twenty-five (25) years is unreasonable.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Richard C. Ashby.

Yours very truly,


NORMAN H. ANDERSON
Attorney General