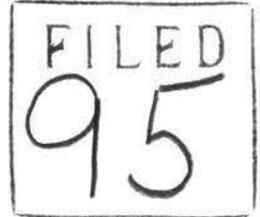


COUNTY AUDITOR:  
COUNTY COURT:  
COUNTY WARRANTS:

The approval of the county auditor is necessary before the county court of a second class county can order payment of a claim against the county out of the county treasury and issue a warrant for such payment, and the county court has the further power to determine whether such a claim shall be paid.

May 14, 1968



OPINION NO. 95  
424 (1967)

Honorable Charles A. Sheehan  
State Representative - District 132  
Missouri House of Representatives  
Route 1, Box 434  
House Springs, Missouri 63051

Dear Representative Sheehan:

This is in response to your request for an opinion, dated October 27, 1967, which reads as follows:

"It is requested that an Attorney General's opinion be issued to the undersigned on the following question: Section 50.160 and Section 55.161 R.S. Mo. 1959 outlines similar duties for both the County Court and the County Auditor in the matter of auditing, adjusting and settling all accounts to which the County shall be a party.

Jefferson County is a second-class county, and my inquiry is, 'Does the County Court have this power in a second-class county equal or co-terminus with the power of the County Auditor?' To express the inquiry in another way, 'Can the County Court insist on auditing, adjusting and settling accounts by itself, or is this power reserved exclusively by the County Auditor?'"

The pertinent part of Section 55.160, RSMo 1959, is as follows:

". . . He shall keep accounts of all appropriations and expenditures made by the county court, and no warrant shall be drawn or obligation incurred without his certification that an unencumbered balance, sufficient to pay the

Honorable Charles A. Sheehan

same, remain in the appropriation account or in the anticipated revenue fund against which such warrant or obligation is to be charged. He shall audit the accounts of all officers of the county annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against said county, and shall in his discretion approve to the county court of said county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by said court; . . . ."

This section clearly provides that the claims against the county shall not be allowed unless and until the county auditor approves to the county court such claims.

The pertinent portions of Section 50.160, RSMo 1959, is as follows:

"The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts;

\* \* \* \* \*

and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, . . . ."

Section 50.180, RSMo 1959, is as follows:

"When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was incurred for which the same was issued, and unless otherwise provided by law, in the following form: . . . ."

Honorable Charles A. Sheehan

We believe that Sections 50.160, RSMo 1959 and 50.180, RSMo 1959, as above quoted, are relevant in providing that the county court shall adjust and settle all accounts to which the county is a party and order the payment out of the treasury of money found due by the county and when so found, the county court issues its warrant for payment.

It is the view of this office that each of the foregoing Sections quoted, Section 50.160, RSMo 1959, and Section 50.180, RSMo 1959, are in full force and effect and that such Sections are not repugnant to each other and must therefore, be held to provide that the county court cannot pay a claim until it has been approved by the county auditor but that the county court does have the power to determine after approval by the county auditor whether such claim is a valid claim and only if the county court so determines a warrant shall be issued.

The Supreme Court in Jackson County vs. Fayman, 44 S.W.2d 879, discusses at length the duties and powers of the county courts with regard to auditing and paying claims presented to them, and it says at l.c. 852,

"The power and authority of county courts and the capacity in which such body acts in auditing and paying claims against the county has been before this court for decision many times. We think that it is now well settled that county courts do not act judicially in allowing, adjusting, or refusing claims presented against the county, or necessarily arising from managing its financial affairs. While such body does not act in a purely ministerial capacity in such matters, in the sense that they act without investigation and have no discretion in the matter, yet they do not try the merits of the claim as a court, but rather act as auditing financial agents of the county whose action is not final in the sense that a judgment of the court is final except on appeal or by other appropriate remedy."

The Court further says at l.c. 853,

"This case has not been overruled, but approved many times, and the same doctrine was restated in State ex rel. v. Diemer, 255 Mo. 336, 351, 164 S.W. 517, 521, in this

Honorable Charles A. Sheehan

language: 'In the allowance of claims against a county, or in settling with county officers, county courts do not act so strictly as a court, or in the performance of a judicial function, and their allowance of disallowance of a claim is res adjudicata. . . .'

The case discussed and referred to with approval by the Supreme Court in Perkins v. Burks, 78 S.W.2d 845, refers and says,

". . . For a discussion of the powers and duties of the county court in auditing and settling demands against the county, see Jackson County v. Fayman, 329 Mo. 423, 44 S.W.(2d) 849. . . ."

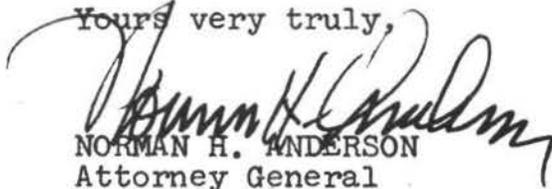
Under these rulings, even though such action in approving claims by the county court is not judicial, the action is, under the administrative power of county courts in administering fiscal affairs of the county, quasi judicial and is not ministerial.

#### CONCLUSION

It is the opinion of this office that the approval of the county auditor is necessary before the county court of a second class county can order payment of a claim against the county out of the county treasury and issue a warrant for such payment, and the county court has the further power to determine whether such a claim shall be paid.

The foregoing opinion, which hereby approve, was prepared by my Assistant, Arnold Brannock.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General