COUNTIES:

Compare: St. Charles, 627 SW2 64 (1981)

County cannot enter into a lease-type agreement for purchase of personal property on payment plan extending over one year without a vote of the people.

OPINION NO. 359

FILED 359

October 29, 1968

Honorable Daniel W. Deiter
Prosecuting Attorney
Montgomery County
Court House
Montgomery City, Missouri 63361

Dear Mr. Deiter:

This is in response to your request for an opinion from this office concerning the following question:

> "May a county, or any other political subdivision of the State of Missouri, validly enter into a lease-type agreement, whereby a piece of personal property is acquired with yearly lease payments being made by the political subdivision, extending over a period of one year or more, with the understanding that at the termination of the lease the political subdivision is to receive the property for a nominal consideration, or, where the political subdivision is to receive the property without any additional compensation having been paid to the lessor? This question assumes that there is not adequate unobligated funds in the treasury to pay the purchase price of the piece of equipment, and that the voters of the political subdivision have not voted to incur an indebtedness in excess of the unobligated surplus in the treasury."

Article VI, Section 26 (a), Constitution of Missouri, 1945, provides:

> "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 question of making a long term lease with option to purchase was considered by the Supreme Court in the case of Sager v. City of Stanberry, 336 Mo. 213, 78 S.W.2d 431, in the light of the above constitutional provision which prohibits any municipal corporation from incurring an indebtedness in excess of the anticipated revenue for one year. In the course of its opinion the court stated 78 S.W.2d 431, 437:

> "The evidence clearly shows that the city asked for and received bids for the purchase of the machinery included in the Fulton Company contract; that the city proposed to buy this machinery on the installment plan; that the Fulton Company's bid was accepted, and it was agreed, and so understood by the city officials and the representatives of that company, that the purchase price of the machinery with interest be paid in monthly installments over a period of 52 months with title reserved in the vendor until the machinery was paid for. The so-called lease designating the monthly installments as rentals is a patent attempt to disguise the true character of the transaction. The facts and events which we have heretofore stated suffice to demonstrate that it was not a bona fide lease, but in legal effect a purchase and sale of the machinery on the installment plan creating a present indebtedness for the full amount payable in deferred monthly installments. It is said in 19 R. C. L. at page 984: 'The purchase of a single public improvement by installments which in the aggregate exceed the debt limit cannot be accomplished by calling the installments rent, if there is a binding obligation to pay them for a definite period and upon the payment of the last installment title to the property passes to the municipality, or by pledging the municipality's good faith for the payment of the installments when it is recognized that there can be no legal liability, if it is provided that if any installment is unpaid title to the entire property shall revert to the contracting party.' This device of clothing a sale and purchase, whereby the purchase price is to be paid in installments, in the guise of a lease and denominating the installments as rentals with a view to thereby

> circumventing constitutional and statutory debt limitations, has been frequently attempted. * * *"

In view of the holding of the Supreme Court in this case, it is the opinion of this office that a county cannot validly enter into any lease-type agreement for the purchase of property with the understanding that at the termination of the lease, the political subdivision is to receive the property when there is not sufficient unobligated funds in the treasury to pay the purchase price at the time the agreement is made.

CONCLUSION

It is the opinion of this department that a county cannot legally enter into a lease-type agreement for the purchase of personal property on a payment plan extending over a period of one year or more with the understanding that at the termination of the lease, the county is to receive title to the property when there is not sufficient unobligated funds in the county treasury to pay the purchase price at the time the lease is entered into, unless the county has, by a vote of the people, voted to become indebted for the amount of the purchase.

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

Yours very truly,

Norman H. Anderson

NORMAN H. ANDERSON
Attorney General