

Answer by letter-Wieler

March 7, 1969

OPINION LETTER NO. 70



Honorable Richard J. Blanck
Prosecuting Attorney
Cooper County
Court House
Boonville, Missouri 65233

Dear Mr. Blanck:

This is in response to your request for an opinion concerning the authority of a County Court in a third class county to compensate a commissioner appointed to sell and dispose of real estate for his services and reimburse him for out of pocket expenses; and whether the County Court can pay an auctioneer hired by the commissioner for his services in conducting such sale.

In order to answer this request, it will be helpful to state the following facts. The real estate involved here was located in Benton County, Missouri. Since Section 49.235, RSMo Supp. 1967, makes it unlawful for a third class county to own real estate in any other state county other than an adjoining county, the County Court of Cooper County appointed a special commissioner to sell the land owned in Benton County. This was done pursuant to the authority granted by Section 49.280, RSMo 1959. The commissioner was given full authority in the appointment order to represent Cooper County with respect to the sale and conveyance of the property. In addition, he was specifically authorized to sell the property at either public or private sale. The commissioner decided to have a public sale and hired an auctioneer to "call" it. No specific arrangements were made with the auctioneer as to compensation, the parties apparently presuming that the rate of payment would be that normally charged by auctioneers in the area.

In this instance, the auctioneer and the commissioner did not enter into a written contract as called for by Section 432.070, RSMo 1959. The law is quite clear that a county cannot be bound by an oral contract. See Attorney General Opinion No. 24, issued to

Honorable Richard J. Blanck

Senator Earl R. Blackwell on February 8, 1962 (copy attached). Therefore, the auctioneer cannot recover against the county for his services.

As to whether the County Court can compensate the special commissioner for his services, it is our opinion that it cannot. Missouri law is quite clear that a public official is not entitled to compensation for his services unless provided for by statute. See Smith v. Pettis County, 345 Mo. 829, 136 S.W.2d 282 (1940). The land commissioner must be considered a public official here, and the statutes are completely silent as to compensation for him.

However, with regard to the commissioner's out of pocket expenses, it is our opinion that he should be reimbursed by the County Court for all the outlays which were bona fide, reasonable and actual expenditures indispensably necessary in carrying out the duties of his office.

It is our feeling that express statutory authority is not necessary to allow reimbursement in those instances where the expense was necessarily incurred in the performance of official duties. See Rinehart v. Howell County, 153 S.W.2d 381, 382 (Mo. 1941).

Therefore, it is our opinion that the Cooper County Court cannot compensate either the special land commissioner or the auctioneer for their services in this instance; but, it can reimburse the special land commissioner for his out of pocket expenses necessarily incurred in the performance of his duties.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 24
2-8-62, Blackwell