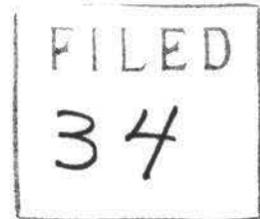


February 14, 1972

OPINION LETTER NO. 34  
Answer by Letter - Klaffenbach

Honorable William S. Brandom  
Prosecuting Attorney  
Clay County, Courthouse  
Liberty, Missouri 64068



Dear Mr. Brandom:

This letter is in response to your opinion request in which you ask the following questions:

- "1. Whether the Circuit Court of Clay County, Missouri, through its budget request can require the County Court to purchase and remodel a specific building for juvenile detention and juvenile office facilities.
- "2. Whether the Circuit Court can purchase and remodel a specific building for juvenile offices and juvenile detention facilities and require, by budget request, the County Court to provide the monies necessary for the purchase.
- "3. Whether the County Court or the Circuit Court makes the determination under the case of State ex rel Weinstein vs. St. Louis County as to the appropriateness of the quarters provided to the Circuit Court for juvenile offices and detention facilities.
- "4. Is the availability of funds for providing services to other county departments a factor that must be considered in making that decision?"

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You also state that:

"Clay County juveniles in detention are kept in the County Jail, which has become extremely crowded. Clay County Juvenile Officers are housed in the Court House and do not contain sufficient space for all deputies to have a desk, leading to several deputies being stationed in Jury Rooms, Judge's offices and even in one of the Court Rooms. The Juvenile Court holds its sessions in a Jury Room. The Circuit Court has proposed to include in its budget for 1972 funds for the purchase of a building, now available, about a block and a half from the Court House, and funds for remodeling the building for detention facilities and office space which would be adequate for the Juvenile Office. The County Court is exploring other alternatives for space but has made no concrete proposals. Tax funds available to Clay County for this year are severely limited as a result of the constitutional ceiling of a 35-cent levy which was in effect for 1971. The County Court expects to be required to cut the budgets of other county offices sharply if it is required to provide the requested funds to the Circuit Court for a building."

Our answer to your first two questions is that the circuit court does not have the power to purchase such real property or to order the county court to purchase particular property for the reason that Section 211.331, RSMo 1969 provides that the county court has the duty to provide such juvenile detention facilities and offices for the personnel of the juvenile court.

The answer to your third question is more difficult. As we noted it is the duty of the county court to provide such facilities. However, there is nothing to deter the circuit court from making a determination that existing facilities are so inadequate that justice cannot function. The inherent power of the circuit court in this respect is noted in State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. 1970) and cases cited therein at l.c. 101. However "such inherent power in the judicial department should be exercised only on occasions where necessary personnel and facilities are not provided by conventional methods." Id. 102. The dissenting opinion of Judge Finch in the later case of State v. Green, 470 S.W.2d 571 (Mo. 1971) restates the principles involved. We cannot say whether such a determination would be proper in the premises or that any action taken by the circuit court would be

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sustained by the Supreme Court on review. Notably the one element of the Weinstein case, the interpretation of the county budget, Section 50.640, RSMo 1969, would not appear to have any bearing in this instance since the circuit court's budget, in our view, could not include money for the purchase of real property for court space or juvenile space as the county court has been given the power to make such purchases. Section 211.331 and Sections 49.305, RSMo 1969 et seq. Changes can be made in the budget submitted by the circuit court or the circuit clerk where there is no authority in law for such expenditures. State ex rel. Weinstein v. St. Louis County, 421 S.W.2d 249, 253 (Mo. 1967).

We wish to add and to make it clear that it is our view that the determination of the question of whether the factual situation justifies the circuit court in acting under the principles enunciated in the cited cases involves a pending question for judicial determination. As such a question is a pending judicial question, we do not believe that we should attempt to resolve it by an opinion of this office.

In answer to your fourth question, it appears obvious to us that the money available to the county must be considered and that the circuit court cannot compel the county court to spend a disproportionate amount of county funds on the circuit court.

Very truly yours,

JOHN C. DANFORTH  
Attorney General