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December 18, 1979

OPINION LETTER NO. 213

The Honorable Gary E. Stevenson
Prosecuting Attorney
St. Francois County
3rd Floor, Courthouse
Farmington, Missouri 63640

Dear Mr. Stevenson:

This letter is in response to your question asking:

If the County Auditor of a Second Class County does not approve a bill or a claim against the County, can the County Court still pay said bill?

If the County Court cannot pay said bill, is mandamus the only remedy that the Court would have to make the Auditor approve a bill that the County Court thinks is legally binding?

You also state:

In the past years the County Court has on numerous occasions wanted to pay bills that the County Auditor did not approve but which the County Court believed were legal and for which payment had been stopped by the non-approval of the County Auditor.

It is our view that Att'y Gen. Op. No. 95, Sheehan, May 14, 1968, is applicable. You have a copy of that opinion, and we have not enclosed it.

The Honorable Gary E. Stevenson

Thus, the answer to your first question is that if the county auditor of a second class county does not approve a bill or a claim against the county, the county court does not have the authority to pay such bill or claim.

Your second question asks whether mandamus is the only remedy that the county court would have against the auditor for not approving a bill that the county court thinks is legally binding. Although it appears that mandamus would generally be an appropriate remedy in such a case, it is also clear that mandamus is not a writ of right and its issuance lies in the sound discretion of the court.

For the general principles involved, see Mandamus, Missouri Appellate Practice and Extraordinary Remedies, 2nd Ed.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and has a long, sweeping horizontal line extending to the right from the end of the name.

JOHN ASHCROFT
Attorney General