

COUNTY COURTS:
CONTRACTS BINDING SUCCEEDING
COURTS:

County court may appoint a superintendent of a poor farm for a term extending into that of their successors in office provided there is no fraud or collusion in connection with such contract.

January 12, 1939



Mr. G. C. Beckham
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Steelville, Missouri

Dear Sir:

This is to acknowledge receipt of your request for an official opinion which is as follows:

"Crawford County, Missouri, owns and maintains a farm upon which is located the County poorhouse, as is provided by Sections 12950 to 12967 of the Revised Statutes of 1929. On January 1st, 1938, the then County Court of Crawford County, Missouri, entered into a written contract with one Henry Jenkins in which they attempted to employ the said Henry Jenkins as Superintendent of the County Farm for the term of two years, said term ending March 4, 1940. On January 1st, 1939, we had a new County Court entirely, all of the personnel of the said Court having been changed by the election of 1938. The present County Court is now desirous of terminating the employment of the said Henry Jenkins as Superintendent of the County farm and poor house. The question is this: Could the County Court of Crawford County, in January, 1938, legally bind the County of Crawford to a contract that extended over a period of time in

excess of the term of office of that County Court?

"Our present County Court has served notice on Mr. Jenkins that his employment will be terminated March 1st, 1939, and Mr. Jenkins claims that he has a valid contract, and that he is employed until March 4, 1940.

"I would like to have the opinion of your office as to the validity of this contract that was made with Mr. Jenkins back on January 1, 1938. Would the County of Crawford be bound at this time by this agreement?"

The superintendent of a poor farm is appointed by virtue of the provisions of Section 12958, R. S. Missouri, 1929, which is as follows:

"Whenever such poorhouse or houses are erected, the county court shall have power to appoint a fit and discreet person to superintend the same and the poor who may be kept thereat, and to allow such superintendent a reasonable compensation for his services."

It appears from your request that all of the personnel of the county court has changed since the contract was entered into with the present superintendent at the poor farm, and that the present court takes the position that they are not bound by the acts of former members of the court in entering into this contract which will not expire until March, 1940.

It does not appear from your request whether or not the court claims there was any fraud or collusion in connection with this appointment and it does not appear whether or not the present incumbent properly qualified and is properly performing his duties, so we assume those questions are not at issue.

As to the authority of the members of one county

court by contract to bind the members of a succeeding court we find that the courts of various states have differed, but generally they had a different state of facts thereby causing the difference. On this question we find the rule stated in 15 C. J., page 542, as follows:

"Although it has been held in some cases that the contract of a county board may be valid and binding, even though performance of some part may be impossible until after the expiration of the term of the majority of the board as it then existed, yet the general rule is that contracts extending beyond the term of the existing board and the employment of agents or servants of the county for such a period, thus tying the hands of the succeeding board and depriving the latter of their proper powers, are void as contrary to public policy, at least in the absence of a showing of necessity of good faith and public interest. * * * * *

An exception to the rule that one court may bind its successors is stated in 70 A. L. R., page 799 as follows:

"In most jurisdictions where a board appoints an officer, or contracts for services, and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board, such appointment or contract for a period beyond the term of the board is not valid. And the same rule applies to confidential relations, such as counsel for the board."

We do not think that the position of superintendent of a poor farm falls within the class referred to in 70 A. L. R., supra.

In the case of Aslin v. Stoddard County, 106 S. W. (2d) 472, the question was up where the county court on December 31, 1932, had appointed certain parties including a superintendent of a county home, the terms of whom would extend over into the next court. Only the presiding judge of the county court of Stoddard County held over. At l. c. 474 the Supreme Court, in the Stoddard County case, said:

"* * * * The county court is a court of record, having certain judicial functions. It also has many administrative duties in connection with the care and management of county property and funds, school funds, highways, etc., and the business affairs of the county generally. When new or different district judges are elected and qualify, no 'reorganization' of the court is required. The presiding judge continues to be such. If he is replaced by another, his successor becomes, by operation of law, presiding judge. In view of the constitutional and statutory provisions creating county courts and prescribing their functions and duties, it is clear that the county court is a continuing body--not a succession of different boards or 'courts.'"

In the Stoddard County case it seems that the only appointment that was contested was that of the janitor at the courthouse. At l.c. 476 in the Stoddard County case the court further said:

"In Manley v. Scott, supra, the Minnesota Supreme Court had before it a question similar to that we are now considering. On December 31, 1908, the board of county commissioners appointed and by written contract employed one Shaffer as morgue keeper

for the year 1909. The terms of two of the five members of the board expired at midnight that night, two new commissioners having been elected at the preceding November election. When the two new commissioners took office, soon after January 1, 1909, the board elected a new chairman and vice chairman, as required by statute, and attempted to rescind the contract with Shaffer and make a new contract with one Manley as morgue keeper for the year 1909. The court held that the board of county commissioners had power to make the contract with Shaffer when it was made and, 'Having the power at that time to employ a morgue keeper, there is no implied limitation upon that power which restricts the possible term of employment to the time when any member or members of the board shall go out of office'; and that, the contract with Shaffer being fair and reasonable and there being no question of fraud or collusion, said contract was binding and the board, after the qualification of the new members, had no power to rescind it without cause being shown. Speaking of the question of power of the board of county commissioners to 'make a contract with an employee which extends beyond the expiration of the terms of office of certain members of the board,' the court said, 108 Minn. 142, 121 N. W. 628, 629, 29 L. R. A. (N.S.) loc. cit. 655: 'While there is some apparent conflict in the authorities, it is reasonably clear that the weight of authority is to the effect that the board has such power,' citing numerous cases. The court further said (108 Minn. 142, 121 N. W. 628, 629, 29 L. R. A. (N.S.) loc. cit. 659), quoting

approvingly from Board of Com'rs of
Pulaski County v. Shields, 130 Ind.
6, 29 N. E. 385:

"It (the board) is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its members. An essential characteristic of a valid contract is that it is mutually binding upon the parties to it. A contract by a board of commissioners, the duration of which extends beyond the term of service of its then members, is not, therefore, invalid for that reason."

* * * * *

"We regard said case of Manley v. Scott as in point and as being soundly reasoned. The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs. * * * "

Mr. G. C. Beckham

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The Stoddard County case sets out the law as it is to be followed in this state.

CONCLUSION.

We are, therefore, of the opinion that the present county court is bound by the contract of appointment of the superintendent of the poor farm made by the former county court in March, 1938, provided there was no fraud or collusion between the parties to the contract.

Respectfully submitted

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APPROVED:

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