COUNTY COURTS: EXECUTING CONTRACTS: SIGNING WARRANTS: FACSIMILE SIGNATURES:

County courts may appoint agent to execute contracts or each member of the court agreeing to the contract may sign it. The elected presiding judge or acting presiding judge may sign county warrants. The county judge may not use a rubber stamp containing his facsimile signature to sign warrants.

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Mr. David E. Blanton
Prosecuting Attorney
Scott County
Sikeston, Missouri

Dear Sir:

This is in reply to yours of the 17th wherein you requested an opinion from this department on the following questions:

1. "Where all Three members of the Court are present but the two associate Judges fail to agree with the Presiding Judge, who under the circumstances has the power and authority to sign instruments such as Contracts entered into by the Court."

2. "I also desire the benefit of your opinion as to whether or not any person other than the Presiding Judge can sign County Warrants, in the event he is absent from the Court due to ill health or otherwise. I have been unable to find any provision that provides for the signing of Warrants by anyone other than the Presiding Judge."

3. "I would also appreciate the benefit of your opinion as to whether or not the Presiding Judge would be complying with the requirements of the Statutes in the signing of a County Warrant by using a rubber stamp with a facsimile signature thereon."

I.

As to the first question which you have submitted we find that Section 2091, R. S. Missouri, 1929, has some application to the subject. This section provides as follows:

> "A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent, and when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge at the time being, to be designated by the clerk of such court, shall stand as the judgment of the court."

Section 12107, R. S. Missouri, 1929, also provides as follows:

> "The county court may, by an order entered of record, appoint an agent to make any contract on behalf of such county for erecting any county buildings, or for any other purpose authorized by law; and the contract of such agent, duly executed on behalf of such county, shall bind such county if pursuant to law and such order of court."

In the case of Morrow v. Pike County, 189 Mo. l.c. 616, we find where a contract was entered into by the county court wherein all the members of the court signed it. This contract as to form was not even questioned.

The rule as to the requirements as to form and manner of making contracts is stated in 15 C. J., page 552, section 248 in the following language:

> "Where the mode and manner of contracting are not prescribed, nor the persons or agents by and with whom contracts are

> to be made, counties may make contracts in all matters necessarily appertaining to them in the same manner as individuals or other corporations. If, however, such mode and manner of contracting, or the officers or agents by and with whom contracts are to be made, are prescribed, the mode prescribed must be pursued. More specifically, it may be said that a contract with a county need not be in writing unless required by statute; but it is frequently required by statute that contracts made on behalf of the county shall be in writing and entered on the minutes by the body making the contract as an agent of the county, and a contract not so evidenced is unenforceable, * * * * * * * * * * * * * * * * * * "

County courts, in the execution of contracts, are controlled by the provisions of Section 2962, R. S. Missouri, 1929, which provides as follows:

> "No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

County courts are creatures of the statute and their powers and duties are derived from the statute and they must look entirely to the statute for authority to perform any act that they may undertake. In the case of Cummings v. Clinton County, 181 Mo. 167, we find where two members of the county court entered into an agreement to pay a

reward and the court held that the county was bound by that agreement. In case the presiding judge of the court refuses to sign or execute a contract which has been agreed to by the other members of the court, then the members of the court agreeing to the contract may sign it and bind the county, or such members of the court agreeing to the contract may, by an order of record, designate some agent to execute the contract as is provided by Section 12107, supra. From our reading of the statute pertaining to the question it seems that if the presiding judge and the county clerk execute the contract they are doing so because they have been authorized as agents of the county court as provided by said section 12107. The county court could designate any other person to execute the contract for them. If the presiding judge refuses to perform some administrative duty in connection with the contract that has been agreed to by the other members of the court, then by mandamus he could be forced to perform such duty, such as issuing any warrants that may be required by the contract.

CONCLUSION.

From the foregoing we are of the opinion that in case the presiding judge of the county court refuses to sign or execute a contract which has been agreed to by the other members of the court, then the members of the court agreeing to the contract may sign it or designate the execution of the contract to any other person, and such contract so signed will be binding upon the county.

II.

Your second question goes to the authority of any person other than the presiding judge of the county court to sign warrants.

On this question we find that Section 12170, R. S. Missouri, 1929, provides as follows:

> "Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one

> time, and shall be written or printed in Roman letters, without ornament. It shall be signed by the president of the court whilst the court is in session, attested by the clerk, and warrants shall be numbered progressively throughout each year: Provided, that where the claim allowed is for more than twenty-five dollars, the claimant may, on his own motion, in open court, have as many warrants issued for separate parts of such claim as he may desire, the whole amount of said warrants not to exceed the amount of the claim allowed, upon his paying the costs of the additional warrants."

We find that the Supreme Court in the case of Isenhour v. Barton County, 190 Mo. 163, 170, in dealing with the question of county warrants said:

> "County warrants are creatures of the statute, and can only be issued in accordance therewith, * * * * * * * * * Such warrants are merely evidences of indebtedness, nonnegotiable, and the Legislature had the power and authority to prescribe their form, by whom they should be signed and attested, * * * "

And in Steffen v. Long, 165 Mo. App., 255, l.c. 259, in discussing county warrants, the court said:

> "The plaintiff did not have the right to the possession of this particular warrant for another reason, viz., it was not signed by the president of the county court. County warrants are creatures of the statutes and can only be issued in accordance therewith. (Isenhour v. Barton County, 190 Mo. 163, 170, 88 S. W. 759.) The Legislature had the power and authority to prescribe, and did prescribe, that they shall be signed by the president of the county court (Isenhour v. Barton County, supra; R. S. 1899, sec. 6797), and without such

signature they cannot be lawfully issued."

Said Section 12170 provides that the president of the court shall sign the warrant. The term "president of the court" has been construed by the administration officials to mean the presiding judge of the court. Webster's Dictionary defines the word "president" to mean presiding.

As we fail to find wherein the lawmakers have provided for any other person to act as a presiding officer of the court than the presiding judge, we think they have intended that the president of the court and the presiding judge shall be one and the same person and that the presiding judge is the one that the lawmakers have intended who shall sign warrants.

While under the statutes it is the duty of the presiding judge, that is, the judge who is elected from the body of the county to sign the warrants, yet if for any cause he is unable to be in court and perform that duty, then we think the lawmakers, by the provisions of Section 2091, supra, have made provisions for a presiding judge to be authorized by the clerk of the court, when the presiding judge is absent, to designate one of the district judges as presiding judge. Said Section 2091 states that a majority of the members of the court may attend to the business of the county. By attending to the business of the county would necessarily imply the duty of issuing warrants. When the clerk of the county court, as authorized by said section, designates one of the members as presiding judge, then we think the lawmakers intended that that person so designated as presiding judge may sign the warrants as directed by said Section 12170.

CONCLUSION.

From the foregoing it is the opinion of this department that in case the presiding judge of the county court is unable to attend a session of the court and sign the warrants that may be required to be signed at such sitting, then if the other two members of the court who are present and holding court and are doing business with the county that member of the court who has been designated by the

clerk as presiding judge may sign the warrants and his acts will have the same force and effect as those of the regularly elected presiding judge of the county court.

III.

Your third inquiry goes to the question of whether or not the presiding judge of the court may use a rubber stamp which contains a facsimile of his signature thereon in signing county warrants.

Again referring to Section 12170, supra, we find this section requires that the warrants shall be signed by the president of the county court. As hereinbefore stated we have treated the term "president of the county court" and the term "presiding judge of the county court" as to be one and the same person.

In the seventh subsection of Section 655, R. S. Missouri, 1929, it is provided as follows:

> "* * * * seventh, the words 'written' and 'in writing,' and 'writing word for word,' shall include printing, lithographing or other mode of representing words and letters, but in all cases where the written signature of any person is required, the proper handwriting of such person, or his mark, shall be intended; * * * * * "

In the case of Steffen v. Long, 165 Mo. App. 255, 259, the court, in speaking of what the lawmakers provided for officers to do in connection with the issuance of warrants, said:

> "* * * * The Legislature had the power and authority to prescribe, and did prescribe, that they shall be signed by the president of the county court (Isenhour v. Barton County, supra; R. S. 1899, sec. 6797), and without such signature they cannot be lawfully issued."

In Vol. 94 A. L. R., page 766, the case of Smith et al. v. Curran in the Michigan Supreme Court is reported and the following rule is announced:

> "The requirement of a city charter that all bonds issued by the city shall be signed by the mayor, countersigned by the comptroller, and attested by the city clerk, and bear a statement to be signed by the city treasurer, is not satisfied by facsimile signatures printed on bonds, so as to render it incumbent on the comptroller to countersign bonds so prepared, even though the use of facsimile signatures may have been authorized by the common council."

And at l. c. 768, the court said:

> "* * * * The precise, specific, and cautious provisions of the charter surrounding the issuance of bonds, obviously designed to provide checks against issuance of spurious securities and to afford evidence of genuineness for ready marketing, put it beyond doubt that the people intended official action of the four officers to be proved by their own handwriting. If any of them may adopt a facsimile signature, all of them may, and the safeguards imposed by the charter would be impaired."

In a comparison of the Michigan statutes with the Missouri statutes we find them to be somewhat similar on the question of signatures by officials, that is, the authority to use a rubber stamp containing the facsimile signature of a person instead of the person writing the signature in his own handwriting or attaching his mark in place of the signature. If the presiding judge of the county court is permitted to use a rubber stamp to attach his signature to the warrant, then any other person who has a duty to perform in connection with the issuance of such warrants could use a rubber stamp to

attach his signature thereto, and we think that the lawmakers by the language they have used in Section 655, supra, and Section 12170, supra, clearly express their intention that they did not intend for the officer to sign a county warrant in any other manner than in his own handwriting or by placing his mark thereto.

CONCLUSION.

In view of the foregoing it is the opinion of this department that the lawmakers did not intend that the president of the county court or the presiding judge who is one and the same person should use a rubber stamp containing his facsimile signature in signing county warrants, but that such warrants must be signed by him in his own handwriting or his mark must be attached thereto and witnessed instead of his signature if he cannot write his own name.

Respectfully submitted

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APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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