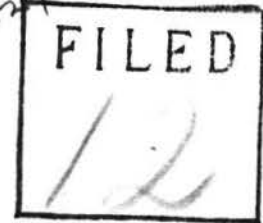


COUNTY COURTS:

May take possession of rooms vacated
by prosecuting attorney and may require
personal property of county to be returned
to the courthouse.

January 21, 1938



Mr. John B. Brooks,
Presiding Judge,
Grundy County,
Trenton, Missouri.

Dear Sir:

We have your letter of January 15, 1938, in which it
is contained a request for an opinion as follows:

"When Charles Hoover, the present Prosecuting Attorney of Grundy County was elected Prosecuting Attorney in the year 1936, over Rex H. Moore, the County Court of Grundy County of which the writer is Presiding Judge, had designated three rooms on the Third Floor of the Court House, well lighted, well heated, with toilet facilities, and all reasonable conveniences, as and for the office of the Prosecuting Attorney of Grundy County, which rooms had been occupied by Rex H. Moore as Prosecuting Attorney.

Also, the County Court furnished a set of Missouri Reports, a Life-Time Missouri Digest, and a set of the Missouri Annotated Statutes, together with some other law books, which Mr. Moore had advised us it was our duty to purchase.

When Charles Hoover took charge of the office of Prosecuting Attorney on the first day of January, 1937, he (without the consent of the County Court) moved all of these law books out of the office of the Prosecuting Attorney and out of the Court House, and established himself in another office, adjoining the office of another Attorney, in a building across the street from the Court House.

Charles Hoover also locked the three rooms formerly used as the office of the Prosecuting Attorney of Grundy County, has carried the key during all of the year 1937 and until the present day--claiming the right to lock and keep locked these three good rooms on the Third Floor of the Court House in Trenton--claiming that since these three rooms had been set apart as and for the office of the Prosecuting Attorney, he has a right to keep them empty and keep them locked merely by reason of the fact that he is the Prosecuting Attorney and that these rooms had been set apart as and for the office of the Prosecuting Attorney.

We have received some advice, That the County Court is not under any legal obligation to furnish any office to the Prosecuting Attorney anywhere. And, we have been further advised that even after we have set apart these three rooms as and for the office of the Prosecuting Attorney, he has only the right to occupy them-- and that if he does not occupy them and use them as and for the office of the Prosecuting Attorney, he has no right to lock the rooms and keep them locked--but, that the County Court has the right to designate the use of these vacant rooms (in the absence of and use by the Prosecuting Attorney) under the provisions of R.S. 1929, Sec. 2078.

The County Court would be glad to have your good opinion at your earliest convenience as to the rights of the County Court with reference to these three vacant rooms, in view of the fact that there has been demands for space in the Court House during the past year and even at present, and we desire to use these three vacant rooms rather than let them remain vacant and idle.

We would be glad to have your opinion on

this point separately from the other question presented by us on this date."

Section 2078 R.S. Mo. 1929 provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Under Section 8526 R.S. Mo. 1929 the sheriff or jailer should have the custody and keeping in charge of the jail. This section was upheld in the case of Kansas City Sanitary Company v. Laclede County, 269 S.W. 395, l.c. 398 in which the court held:

"***** Under section 12549 the jail is required to be kept in good and sufficient condition and under section 12551 the sheriff of the county has the custody, keeping, and charge of the jail. He therefore has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition, which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. Harkreader v. Vernon County, 216 Mo. 696, 116 S.W. 523."

It has been a mooted question for sometime to state what the duties of the county court are in reference to furnishing offices janitor services, stationery, postage, and equipment for the county officers. The courts have been very liberal in their decisions in the furnishing of offices, etc., but the statutes do not set out very clearly what the county courts must do in furnishing such facilities.

In the case of Saylor v. Nodaway County, 159 Mo. 520,

under a statute providing that the necessary expenses incurred by the probate court, "for books, stationery, furniture, fuel and other necessaries shall be paid by the county", the court held that the county court was compelled to pay the probate judge for postage stamps in the discharge of his official duty.

In the case of Ewing v. Vernon County, 216 Mo. 681, l.c. 692, involving what the recorder may have for equipment and expenses, the court said:

"***** There is not a word in the chapter (chap. 147), relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons, or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; and when we read in section 9057 that the recorder of deeds must give a bond conditioned that he will deliver up to his successor among other things 'the furniture and apparatus belonging to the office, whole, safe, and undefaced,' we but gather (what we knew before) that the furniture and apparatus do not belong to the recorder, but to the county, and under Revised Statutes 1899, section 1777, are under the control and management of the county court.*****"

In the companion case of Ewing v. Vernon County, 216 Mo. 698, the court held that the sheriff's office is entitled to janitor service at the expense of the county and it is the duty of the county court to reimburse the sheriff for outlay for such service.

In Buchanan v. Ralls County, 283 Mo. 10, the Supreme Court held that it was the duty of the county to furnish the county treasurer with suitable office space, heat, lights and furniture service under the statute. Section 12136 R. S. Mo. 1929 which provides that:

"*****. The county court shall provide said county treasurer with suitable rooms and secure a vault in the courthouse or other building occupied by county officers, *****."

In many instances there are no statutory provisions for certain county and state officers in what they shall have for expenses and office equipment, but we find that it has been the attitude of the Supreme Court that where there is an express grant of power, it carries with it special implied powers as are necessary to carry out the purposes of the authority granted.

In all of these cases the statutes have not been explicit on what should be furnished each county official yet the courts have adopted a liberal view in the interest of efficiency of the offices and the officers in the performance of their duties. The statute does not set out anything as to furnishing office equipment to the prosecuting attorney. According to your request several provisions were made for the prosecuting attorney and he has seen fit not to take advantage of them and it is our opinion that no further effort be made to have him use the rooms provided for him.

Under Section 2078 R.S. Mo. 1929 as above set out the county court not only has control of the county buildings, but also the control of the personal property of the county. The prosecuting attorney in removing the office fixtures and law library has done so without any authority from the county court and did render the personal property of the county void as to any blanket insurance held on the property by the court. In the case of State ex rel. Buckner, v. McElroy, 309 Mo. 595, the legislature of this state attempted to pass an act which would place the control of several of the county buildings under the parole board which consisted of circuit judges of Jackson County, Missouri. This act was in direct violation and unconstitutional and was so held by the court. It was unconstitutional for the reason that it violated Section 36 of Article 6 of the Missouri State Constitution which reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as

may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

The court in this case also held as follows:

"The gist of this case hovers around Section 36 of Article VI of the Missouri Constitution for 1875. This section reads: 'In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law.' By law these courts have been established so as to consist of a presiding judge (to be elected by the whole county) and two associate or district judges to be chosen by the electorate of their respective districts. But what we want to emphasize is the fact that the court is of constitutional origin, and its jurisdiction fixed by the Constitution. In the language of the organic law such court 'shall have jurisdiction to transact all county ***** business.' Other business may be added to its jurisdiction by law, but no law can take from it that which the Constitution expressly gives, i.e., that it shall transact all county business. By Section 2574, Revised Statutes 1919, such court is given control of all county property, both real and personal, and with it the added authority to purchase, lease and receive by donation any property, real or personal, for the county. Likewise we find the power to sell property belonging to the county, and to audit and settle all de-

mands against the county. Much of this section has stood for many years, and is and was a legislative construction of the Constitution when it speaks of transacting county business. The law-makers understood that the transacting of county business meant the control of all county property, whether such property was in the nature of either penal or eleemosynary institutions. The law-makers would have just as much power to place the county jail, or the poor farm under the control of a parole board, as they would have to place the three institutions mentioned in the pleadings herein. Or, to broaden the field, the divers state eleemosynary and penal institutions of the State could as well be placed in a board of supreme or circuit judges. The management of county and state property, having no direct connection with the work of the judges, should not be placed in the hands of the judges. It has been ruled that courts can appoint agents and officers connected with the court and look after the property wherein the courts are held, and many things incidental to the workings of courts, but such is not the case here. For that reason we do not discuss or pass upon such matters. Here the power is conferred, by the Constitution, upon the County Court of Jackson County to manage and control these institutions and no mere legislative act can thwart the Constitution.*****."

CONCLUSION

In conclusion it is the opinion of this office that the county court is the sole custodian of the courthouse but

Mr. John B. Brooks

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not that part of the courthouse used as a jail. In view of the fact that there have been demands for space in the courthouse during the past year and even at present, and the prosecuting attorney has seen fit to vacate the three rooms assigned to him, the county court has not only full authority to take possession of the rooms but also has authority to demand that the personal property of the county be returned to the courthouse.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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