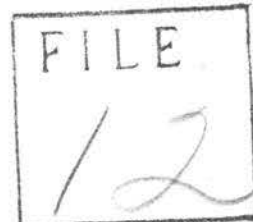


MISSOURI SCHOOL FOR THE BLIND: County court not authorized to pay expenses of students who are not sent by court order.

April 22, 1942

5-1

Honorable R. Wilson Brown, Superintendent
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri



Dear Mr. Brown:

Under date of April 9, 1942, you wrote this office requesting an opinion, as follows:

"The Revised Statutes of Missouri, 1939, Chapter 72, Article 25, Section 10856, provides that when a person is entitled to the advantages of the Missouri School for the Blind and the parents are unable to pay the expenses of such person at this school, the county court shall order him or her sent to the proper school, at the expense of the county for his clothing and traveling expenses.

"There are two questions in our minds:

- "1. Does this provision of the law apply when the parents voluntarily send students to this school instead of the county court ordering the students sent? In other words, what if the student comes in without the order of the court but at the request of the parents and yet the parents cannot afford to furnish the child with such expenses as clothing?

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"2. When county courts refuse to pay student expenses, or issue class 5 warrants which cannot be cashed, what is the procedure to be followed by this school in collection of accounts?"

Section 10856, Article 25, Chapter 72, R. S. Mo. 1939, referred to in your letter, is as follows:

"Whenever, upon petition of any person, and satisfactory evidence adduced to the county court of this state that there is a blind or deaf person residing in any county, and such person is entitled to the advantages of the Missouri school for the blind or the Missouri school for the deaf, and the parents or guardians of such persons are unable to pay the expenses of such person at his proper school, the county court shall order him or her sent to the proper school, at the expense of the county for his clothing and traveling expenses."

You will note this section only authorizes the expenditure of county funds after a petition has been filed, evidence produced and the finding of the court rendered on the petition and the evidence.

The powers of a county court are conferred upon it by statute and it must act within the power conferred. In the case of *Steines et al. v. Franklin County, et al.*, 48 Mo. 167, l. c. 177, it is stated:

"As County Courts are only the agents of the county, with no powers except what are granted, defined and limited by law, like all other agents they must pursue their authority and act within the scope of their powers. (*Wolcott v. Lawrence County*, 26 Mo. 272; *Ruggles v. Collier*, 43 Mo. 353.)"

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From the foregoing it is apparent a county court would have no authority to pay the expense of a student in the Missouri school for the blind until the provisions of Section 10856, R. S. Mo. 1939, had been complied with.

As to your second question, a county court acts in a ministerial capacity in auditing and paying claims against the county. *Nodaway County v. Kidder*, 129 S. W. (2d) 857. If the amount due was a definite, fixed amount then a proceeding in mandamus would compel the court to issue its warrants. However, if the amount due were in dispute it would require a suit against the court to determine the amount due before mandamus would issue.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

Roy McKittrick
Attorney-General

WOJ:CP