HEALTH: House Bill No. 307 relating to county public
TAXATION: health centers is constitutional, and tax
CONSTITUTIONAL LAW: voted for when health centers were organized under former law can be levied. Health centers previously organized to continue under management and control of board of trustees as provided in House Bill No. 307.

July 2, 1951

7-6-51

Honorable James V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri

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Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

> "We are now informed that the Legislature has passed and the Governor has signed, with an emergency clause, House Bill No. 307, which relates to County Health Centers, and which, they say, takes all the bugs out of the old law, and the State Health authorities are telling the Counties which voted for the tax under the old law that they may now proceed to operate. However, several doubts exist in our minds and we need an official opinion to straighten it out.
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> "1st. If a County had the required number of petitioners to file the request and an election was held under the old law, with better than 2/3 majority in favor, can the County now levy the tax and operate under the new law?
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> "2nd. Does the passage of the new law cure the defects of the old one and can the County Health Centers set up under the old law continue to legally operate, even after the appointment of trustees, without the filing of a new petition and the holding of another election?

"3rd. For the purpose of calling a new election, may the old petition be withdrawn and refiled, so as to support the County Court in making an order for a new election, under the new law?

"4th. Is the new law Constitutional?"

You will recall that heretofore you have requested an official opinion of this office regarding the constitutionality of the Public County Health Center Law, RSMo 1949, Sections 205.010 to 205.150, inclusive. In answer to that request our opinion was submitted to you under date of January 22, 1951. In that opinion we held certain provisions of the law to be unconstitutional on two grounds:

1. That Section 205.040, RSMo 1949, providing for an official health organization which was in the nature of a public agency and the existence of which depended upon the voluntary acts of at least two hundred and fifty people forming said organization, was unconstitutional because it constituted an illegal delegation of legislative power to private individuals, in violation of Section 1, Article III of the Constitution of Missouri, which vests the legislative power in the General Assembly.

2. That the control and management of a county public health center and the property connected therewith was county business, and to lodge jurisdiction of such business with the official health organization instead of the county court was in violation of Section 7, Article VI of the Constitution of Missouri.

In connection with the first ground, our principal authority relied on was the case of State ex rel. Jones v. Brown, 92 S.W. (2d) 718, 338 Mo. 448, from which we quoted extensively.

We then pointed out that the purpose of the Public Health Center Law could not be carried out if the required number of citizens within the county or counties failed to voluntarily form the official health organization, and that the statute relying upon the voluntary acts of private citizens to bring said organization into existence was an illegal delegation of legislative power to private individuals, in violation of Section 1, Article III of the Constitution of Missouri.

With the enactment of House Bill No. 307 by the 66th General Assembly, that portion of the old law providing for the official health organization and its powers and duties in connection with the operation of the public county health center was repealed. In lieu thereof a board of health center trustees is provided for, consisting of five members to be first appointed

by the county court and thereafter to be elected beginning with the next general election. Thus Section 205.030 of House Bill No. 307, in part, provides:

> "The county court shall appoint five trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, not more than three of the trustees to be residents of the city, town or village in which the county health center is to be located, who shall constitute a board of trustees for said county health center.
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> "2. The trustees shall hold their offices until the next following general election, when five health center trustees shall be elected who shall hold their offices, three for two years and two for four years. The county court shall by order of record specify the terms of said trustees.
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> "3. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the election of health center trustees who each shall serve for a term of four years.
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> "4. Any vacancy in the board of trustees occasioned by removal, resignation or otherwise shall be reported to the county court and be filled in like manner as original appointments, the appointee to hold office until the next following general election, when such vacancy shall be filled by election of a trustee to serve during the remainder of the term of his predecessor."

Section 205.040 of said bill provides for the manner in which candidates for health center trustees shall file for said office and for the manner in which they shall be elected.

Section 205.045 of said bill provides for the trustees appointed or elected taking an oath; provides for the organization of the board and the election of a chairman and secretary; provides for the county treasurer acting as treasurer of the board of trustees and, as such, his duties; and further provides for the powers and duties of the board of health center trustees in connection with the operation of the county health center.

It is therefore apparent that under the provisions of House Bill No. 307 the control, management and administration of the public county health center is no longer sought to be vested in an organization the existence of which is dependent upon the voluntary acts of a certain number of individuals banding together to form same, and therefore the infirmity of the old law which we declared to exist relative to the first ground of unconstitutionality is no longer present.

The second ground upon which we considered the old law to be unconstitutional was based largely upon the decision of the Supreme Court of Missouri in the case of State ex rel. Bucker v. McElroy, 274 S.W. 749, 309 Mo. 59, which was cited and copiously quoted in the opinion first submitted to you. In that case the court was construing Section 36, Article VI of the Constitution of Missouri of 1875, which, in part, provides:

> "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. * * *"
> (Emphasis ours.)

Again in the Bucker case, at l.c. 751, the court said:

> " * * * 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; * * *"

However, in the Constitution of Missouri of 1945 the language contained in Section 7 of Article VI is somewhat different from that appearing in Section 36 of Article VI of the Constitution of 1875. Thus Section 7, in part, provides:

> "In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. * * *"

You will note in reading the above-quoted provision that immediately following the words "county business" the words "as prescribed by law" appear, and the words "such other business" as appeared in Section 36 of Article VI of the Constitution of 1875, which the court was construing in the Bucker case, are now omitted.

Since the adoption of the Missouri Constitution of 1945 the Supreme Court has undertaken to distinguish the Bucker case in declaring the power of the county court to manage the county business. This distinction is one which we overlooked and failed to present in our first opinion. In the case of State ex rel. Kowats v. Arnold, 204 S.W. (2d) 254, 356 Mo. 661, the court, at S.W. l.c. 259, said:

> "We have traced the history of our law on this subject rather fully to show the background when the Constitution of 1945 was adopted. Under the Constitution of 1875 both the probate courts and the county courts were constitutional courts, and the statutory law for both ran parallel. As we said in the Downey case, supra, their spheres then were somewhat different. But now, under the Constitution of 1945 the powers of the county courts have been narrowed and their status changed. * * *
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> "Respondent's motion for rehearing invokes State ex rel. Buckner v. McElroy, 309 Mo. 595, 608, 274 S.W. 749, 751, which was not cited below in the Probate Court's memorandum, or in our opinion. It ruled Sec. 6, Art. VI, Const. Mo. 1875, Mo. R.S.A., vested in the county courts 'jurisdiction to transact all county * * * business,' and specifically and sole authority to manage and pay the maintenance costs of specified public institutions for the protection, care and education of delinquent and dependent children, to the exclusion of a Board of Paroles composed of circuit judges, created by a statute. That was true then, but as pointed out in the principal opinion, county courts are not constitutional courts

> now, and Sec. 7, Art. VI, Const. 1945, Mo. R.S.A., only gives them power to manage all county business as prescribed by law. They may be abolished altogether in certain counties. * * *"

From the above decision it is apparent that under the present constitutional provision the powers of the county court to manage county business has been considerably limited, and the county court is now only given such power to manage county business as may be prescribed by law.

As a matter of fact, the Supreme Court of Missouri in a decision subsequent to the Bucker case, but before the adoption of the 1945 Constitution, undertook to limit the jurisdiction of the county court. In State ex rel. Walther v. Johnson, et al., 173 S.W. (2d) 411, 351 Mo. 293, the Supreme Court, en Banc, quoting from an earlier decision, said at S.W. l.c. 413:

> "In State v. Corneli, 347 Mo. 1164, 152 S.W. 2d 83, 85, this court, in discussing the constitutional powers of the county court, said: 'We concede that the county court is created as a court of record and its jurisdiction partially fixed by the constitution. Section 36 of Article VI of the Missouri Constitution Mo. St. Ann. vests such court with "jurisdiction to transact all county and such other business as may be prescribed by law." But the authorities are uniform to the effect that county courts possess only limited jurisdiction. Outside the management of the fiscal affairs of the county, such courts possess no powers except those conferred by statute.' * * *"

In view of the foregoing authorities we are now constrained to the view that the provisions of House Bill No. 307 lodging the control, management and administration of the public county health center with a board of trustees is not in violation of Section 7, Article VI of the Constitution of Missouri, 1945, and it was within the power and authority of the Legislature to so provide. Such being the case, the second ground of unconstitutionality contained in the opinion first submitted to you is no longer existent.

Consequently, with the infirmities upon which we heretofore declared the old law unconstitutional now removed, we are of the opinion that House Bill No. 307 is constitutional.

In connection with your first question, we note that Section 205.010, RSMo 1949, which provided for the levy of a tax, in part, reads:

> " * * * which tax shall not exceed one mill on the dollar, for a period of time not exceeding twenty years, and be for the issue of county bonds to provide funds for the purchase of a site or sites, the erection thereon of a public health center and for the support of the same including necessary personnel, * * * "

It was under the authority of the above statute that the petitioners to which you refer acted in presenting their petition and subsequently voting to establish a public county health center and to levy a tax therefor. You will note in reading our former opinion that we did not declare the above statute unconstitutional.

Although Section 205.010, supra, has been repealed by the enactment of a section of the same number, contained in House Bill No. 307, we do not believe that said repeal renders nugatory the acts already done and performed by the voters of a particular county toward the formation of a public county health center.

In this connection your attention is directed to Section 1.150, RSMo 1949, which provides as follows:

> "When a law repealing a former law, clause or provision shall be itself repealed, it shall not be construed to revive such former law, clause or provision, unless it be otherwise expressly provided, nor shall any law repealing any former law, clause or provision be construed to abate, annul or in anywise affect any proceedings had or commenced under or by virtue of the law so repealed, but the same shall be as effectual and be proceeded on to final judgment and termination as if the repealing law had not passed, unless it be otherwise expressly provided." (Emphasis ours.)

It is further apparent that House Bill No. 307 was enacted for the purpose of remedying any defects that were supposed to exist in the former law. This is manifested in the emergency clause of the act, which provides as follows:

> "Whereas, questions have been raised as to the constitutionality of certain provisions of the existing county health center law, causing some counties, whose citizens desire to establish county health centers, to refrain from doing so to the detriment of the public health of such counties, and causing some concern in counties now operating health centers; therefore, this act is declared necessary for the immediate preservation of public peace, health and safety, and an emergency exists within the meaning of the constitution. Therefore, this act shall be in full force and effect from and after its passage and approval."

Furthermore, House Bill No. 307 is hardly more than a revision of the former act, and both relate to the same subject matter.

In the case of State ex rel. Stone v. The County Court of Vernon County, 53 Mo. 128, a mandamus proceeding was instituted to compel the county court to district the county into four districts for the purpose of electing justices to constitute the future county court and to order an election therefor. In 1872 an act had been passed to provide for the organization of counties in municipal townships and to provide for the local government thereof. Under that act a petition was presented and the matter was submitted to the voters of the county. Consequently, the county court divided the county into suitable townships to meet the requirements of the people, but later, in 1873, refused to district the county and to order an election of justices upon the ground that a later act passed in 1873 specifically repealed the act of 1872. In deciding the question the court, at l.c. 131, 132, said:

> " * * * There is no doubt of the correctness of the general rule, that lege posteriores priores contrarias abrogant. But this rule has its limitations.
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> "The act of 1873 is really nothing more than a revision of the act of 1872. Some of the provisions in the two acts are identical, and they all relate to the same

subject matter. The purpose of the later enactment was to remedy defects that were supposed to exist in the former. The subsequent law was not designed to interrupt the continuity of the first act, so as to avoid or annul proceedings commenced under it.

"By the first section of article 17, in the act of 1873, (Sess. Acts. 1873, p. 120,) it is provided, that the County Court in each county having adopted the township organization, at their first meeting after the adoption of the act shall proceed to district their respective counties, as directed in article fifteen, for the purpose of electing County Court judges, and shall appoint a day for the purpose of electing the same. Then after making various provisions, not necessary to be here noticed, the 6th section declares, that an act entitled, 'an act to provide for the organization of counties into municipal townships, and to further provide for the local government thereof,' approved March 18, 1872, is hereby repealed.

"This last section does, in terms, repeal the former law, but the effect is not to be ascribed to it of completely annulling all proceedings commenced when the former law was in force. * * * As a law existed providing for township organization before, and the provision for putting it in force is essentially the same in both acts, the latter law must be construed as a mere continuation of the former, and one vote of the people is sufficient. But after the passage of the act of 1873 all subsequent proceedings must conform to it.

"Under the law the repeal did not affect or render nugatory the acts done, for the statute expressly provides, that the repeal of any statutory provision shall not affect any act done or right accrued or established in any proceeding; but that every such act, right and proceeding, shall remain as valid and effectual as if the provisions so repealed had remained

> in force, (W. S. 895, Sec. 5,); as the repealing section did not affect or impair the vote of the people of Vernon county in adopting the law in favor of township organization, it results that the law was then in full force, and that the new act simply gave it application and direction." (Emphasis ours.)

You will note that the court in the above case relied upon the provisions of the statute which now appear in Section 1.150, supra.

In the case of State ex rel. Wayne County v. Hackmann, 199 S.W. 990, there was involved a proceeding in mandamus to require the State Auditor to register bonds. Under authority of certain statutes of 1909 the County Court of Wayne County had issued certain road bonds. The preliminary steps necessary to authorize the issuance of the bonds, in conformity with the statute then in force, had been complied with, but the bonds were not actually issued until after the repeal of the statutes under which the action was originally taken. The bonds were subsequently sold and registered. After the repeal of the statutes authorizing the bond issue the county court sought to issue refunding bonds to retire the bonds previously issued, and it was the refunding bonds which were refused registration. In ruling on the question the court, at l.c. 991, 992, said:

> " * * * No special saving clause was attached to the repealing act. Except by way of emphasis to give explicit application to general laws, such special saving clause was unnecessary. A repealing statute which, construed alone, would paralyze partly executed powers, is, under our legislative system, so modified by sections 8060 and 8062, R.S. 1909, as to perpetuate such powers to the extent of authorizing the completion or consummation of the purpose sought to be effected under a former law. Section 8060 so far as applicable to the case at bar is as follows:
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> "'Nor shall any law repealing any former law, clause or provision be construed to abate, annul, or in any wise affect any proceedings had or commenced under or by virtue of the law so repealed, but the same shall be as effectual and be proceeded on to final judgment and termination, as if the repealing law had not passed, unless it be otherwise expressly provided.'

"This court, in Rogers v. Railroad Co., 35 Mo. 153, discussing a question as to the modifying effect of said section upon a repealing statute, said, in effect, that this provision (section 8060) preserves the relator's right of action notwithstanding the repeal of the statute under which the right was given. The Legislature, however, not satisfied with leaving the validity of acts done to implication, where the facts in regard to a repeal were as in the case at bar, enacted section 8062, which provides that:

"'The repeal of any statutory provision shall not affect any act done or right accrued or established in any proceedings, suit or prosecution, had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right and proceeding shall remain as valid and effectual as if the provision so repealed had remained in force.'

"These sections, construed together, so modify a repealing statute as to not only render valid initiatory or preliminary acts in the exercise of a power conferred by a former statute, but authorize such subsequent acts as may be necessary to effect the purpose originally contemplated. * * * The limitation of the operative effect of these sections to judicial transactions as contended for by respondent is not in accord with their terms nor with the evident purpose of their enactment. Their general nature authorizes the conclusion that they were intended to continue in force repealed laws until proceedings commenced thereunder, regardless of their nature, might be completed. * * *

" * * * Although there was an express repeal of the former statute the immediate re-enactment of same, except as to the changes noted, left, so far as the practical application of the law is concerned, the same power in the county court. Under these conditions, although the latter law does in terms repeal the former, the effect is not

> to be ascribed to it of annulling all proceedings commenced when the former law was in force. The operative force of both laws being essentially the same, the latter may properly be construed to be a continuance of the former; * * *" (Emphasis ours.)

Section 205.046 of House Bill No. 307 provides as follows:

> "In those counties of the state now operating county health centers pursuant to the provisions of this chapter, the county court of each such county shall immediately appoint a board of trustees as provided in section 205.030, who shall hold office until the next following general election, at which election trustees shall be elected as provided in said section 205.030. All funds and property of any health center now operating shall be turned over to the board of trustees hereby created upon the effective date of this act and all contracts, gifts and obligations by or to such health center may be enforced by or against said board of trustees after this act becomes effective."

It is apparent in reading the above section that it was the legislative intent to continue the operation of county health centers previously organized and to place such health centers under the control and supervision of a board of trustees. In other words, it appears to be the plain intent of the Legislature for any action commenced under the provisions of the old law in regard to the organization of a public health center to be continued under the supervision and control of the board of trustees.

In view of the authorities above cited showing that action commenced under the former law toward the organization of county public health centers and the levying of a tax to provide funds therefor may be continued, although certain sections of the former law are repealed, and considering the legislative intent to continue in existence health centers previously organized, we are constrained to answer your first question in the affirmative.

In answer to your second question, we believe that we have adequately pointed out that House Bill No. 307 cures the defects of the former law which we at one time thought to exist, and under the provisions of Section 205.046, supra, it appears that a county health center previously organized can continue to

legally operate under the supervision, control and management of a duly appointed board of trustees. Furthermore, the law is silent on the filing of any new petition or for the holding of another election in connection with county health centers already organized.

In answer to your third question, there is no provision in House Bill No. 307 requiring a new petition be filed and another election be held in connection with county health centers already organized. The law only provides for the filing of petitions and the holding of elections in counties desiring to establish a public health center, and which have not already done so.

CONCLUSION

In the premises, it is the opinion of this department that House Bill No. 307, relating to public health centers, is constitutional and cures the defects which may have previously existed in the former law also relating to public county health centers.

In those counties where action has already been taken to organize public health centers, to levy a tax and to provide funds therefor, the continued operation, management and control of said health centers shall be under a duly appointed board of trustees.

The tax previously voted under the authority and for the purpose as declared in the former law can continue to be levied without the filing of another petition or holding of another election.

Respectfully submitted,

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APPROVED:

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