CIRCUIT COURT:
COUNTY COURT:
JURISDICTION: The County Court of Dallas County may, by proper order, designate some other building within the seat of justice of Dallas County as the place to hold circuit court, and that prior to holding court at such new place the sheriff should make proclamation of the new place of holding court.

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January 11, 1954

Honorable James P. Hawkins
Judge, 18th Judicial Circuit
Buffalo, Missouri

Dear Sir:

By your letter of December 29, 1953, you requested an official opinion as follows:

> "Our Circuit Court Room here in Buffalo is in an unsafe and dangerous condition. The roof was about to cave in a few weeks ago, and the County Court employed carpenters to try to do something with it. We started the trial of a criminal case yesterday morning and then noticed that the roof was about to cave in - we recessed Court and moved to the School House and continued the trial - (whether we had any jurisdiction there or not is now immaterial because it resulted in a nolle by the State). I feel it my duty to no longer use the Court room, and wish you would advise me the procedure for us to undergo so that we can legally hold Court in some other building here in town."

Article V, Section 14, Constitution of Missouri, 1945, requires the circuit court to sit at the time and place prescribed by law:

> "The circuit courts shall have jurisdiction over all criminal cases not otherwise pro-

> vided for by law, exclusive original jurisdiction in all civil cases not otherwise provided for, and concurrent and appellate jurisdiction as provided by law. Such courts shall sit at times and places in each county as prescribed by law." (Emphasis ours.)

Dallas County, of which Buffalo is the county seat, is placed in the 18th Judicial Circuit by Section 478.263, Cum. Supp., 1951:

> "In the county of Hickory on the first Monday of each of the months of April and September; in the county of Polk on the first Monday in March, the third Monday in June, and the first Monday in December; in the county of Dallas on the first Monday in January, the fourth Monday in April and the first Monday in October; and in the county of Webster on the first Monday in February, the fourth Monday in May and the first Monday in November."

The county court is required to erect and maintain a courthouse, by Section 49.310, RSMo 1949:

> "The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county. * * *"

This section, in effect, gives to the county court the authority, and requires that the county court designate and provide a suitable place for holding circuit court. Thus, the county court may, by proper order, designate any suitable building, at the seat of justice, as the place for holding circuit court. Section 47.300, RSMo 1949, contemplates the change of place of holding court, upon change of the seat of justice, as follows:

> "As soon as convenient buildings for the holding of courts, together with a good

> and sufficient jail, can be had at such new seat of justice, the county court shall notify the judges of the several courts holden in the county, at the next term thereof, who shall cause the sheriff to make proclamation at the courthouse door, in term time, that such court will thereafter be held at the place so selected." (Emphasis ours).

Although, the above section was enacted in contemplation of removal of the seat of justice from one town or city to another place, it, nevertheless, would seem desirable to give such public notice of the change of place of holding court, even though such change may be merely from one building to another building within the same town or city. Therefore, we conclude that the county court may, by proper order, designate any suitable place within the seat of justice as the place of holding circuit court; and that upon such order, and upon giving the public notice required by Section 47.300, supra, that such new place is the proper place for conducting circuit court.

Although not necessary to answer your question, discussed below are some Missouri cases in which the circuit court was held at a place other than the regular courthouse. In State v. Peyton, 32 Mo. App. 522, the defendant was indicted for the crime of burglary and larceny and released upon bond. Defendant failed to appear and the recognizance was declared forfeited. It appeared that the circuit court had for some time been held in "Barrett's Hall," and that the regular courthouse had been condemned. The appellant securities contended that they should have been three times called at the condemned courthouse rather than at Barrett's Hall. The court disposed of that contention, saying at l.c. 528:

> " * * * It appears from the record that the courthouse had been condemned, and for some time prior to the date of this forfeiture, Barrett's Hall had been used for a courthouse. As said in Bouldin v. Ewart, 63 Mo. loc. cit. 335: 'The very fact of holding the court there necessarily implied a judicial assertion of the right to hold it. It was a de-facto court and its proceedings were not void, even should it be conceded that its session was at a

> place unauthorized by law. This being so, the place where such court was held was, at least pro hac vice, the courthouse.' See also Kane v. McCown, 55 Mo. 189."

In Kane v. McCown, 55 Mo. 181, the circuit court was held in a church, the regular courthouse being occupied by a troop of federal soldiers during the Civil War. The execution sales in question were objected to because the sales were made at the door of the church, rather than at the regular courthouse. This objection was disposed of as follows, l.c. 198:

> "But it is urged, that all these sales, having been made at the door of a church or meeting house, in which the Circuit Court at the time held its sessions, in the town of Warrensburg, were therefore void. The evidence clearly established the fact that the sales were at the door of a building not usually used as a court house, but which at the time was so used, because the building regularly appropriated to these purposes was occupied by troops of soldiers, and was otherwise not in a condition to be used as a court house. It is plain that a sale at the door of the deserted court house, where no court was in session, would have been utterly against the spirit and meaning of the law. Whether the County Court had failed to provide a suitable building for holding court, or whether the Circuit Court had selected the building for its session, is not material. It could not be maintained, that the proceedings of the Circuit Court would be invalid, although its sittings were not in a building designated by the County Court. Both buildings were at the county seat of the county. And the obvious meaning of the execution law is to require sales at the door of the building occupied and used as a court house."

In Herndon v. Hawkins, 65 Mo. 265, the validity of an execution sale was questioned because the circuit court was held in a house belonging to one S. I. Forrest, fourteen miles

from the county seat, at Gainsville, Gainsville had been completely destroyed during the Civil War, and no houses were standing in the town. The county court had ordered the sheriff to select a house, for the purpose of holding court, as near as practicable to the county seat. The sheriff selected the Forrest house, and at that place the final judgment upon which the execution was issued was rendered. The court said, l.c. 269:

> "* * * The correctness of the general proposition that when the record affirmatively shows that a judgment in a cause was pronounced at a time and place where the law did not authorize the holding of court, such judgment will be held to be a nullity, is unquestioned. There is no dispute in this case as to the power of the judge under the law to hold the court at the time it was held, but his power to hold it at the place where it was held is denied. The question is not free from doubt and difficulty, and has not before been directly presented to this court, nor is such a case as the facts before us disclose expressly provided for by statute. It is provided in Chap. 40 Wag. Stat. 394, that, when a new county is organized, as soon as convenient buildings can be had, or a court house and jail are erected at the established seat of justice, the courts of such county shall be held at such seat of justice; and until such convenient building can be had, or a court house and jail erected, such court shall be held at such places as the county tribunal transacting county business shall determine. When such tribunal determines the places at which such courts shall be held, and causes proclamation to be made at the court house door, that the courts thereafter will be held at such place, and if the place so selected shall not be the established seat of justice, the courts to be held in such county shall as soon as the court house and jail are erected, or sooner, if the tribunal transacting county business shall deem it expedient, be removed to and thereafter held at such established seat of justice. It is also provided in Art. 2 Chap. 40 Wag.

Stat. 402, that when the seat of justice of any county shall be removed 'as soon as convenient buildings for the holding of courts, together with a good and sufficient jail, can be had at such new seat of justice, the county court shall notify the judges of the several courts holden in the county at the next term thereof, who shall cause the sheriff to make proclamation at the court house door, in term time, that such courts will thereafter be held at the place so selected.' It is manifest from the above provisions of the law that, as a condition precedent to the holding of courts at the seat of justice of a county, some place to hold them in must be provided by the county tribunal charged with that duty, and that, until such provision is made, the courts might legally be held at any other place or places in the county designated by the county tribunal. But it is said that the case at bar does not arise under the statute relating to the organization of new counties, nor to the removal of seats of justice, and is, therefore, not embraced within their provisions. While it is true, the case we are considering is not embraced within the letter of the act, it is by the spirit of it, that spirit being to authorize the county tribunals to provide a place other than the seat of justice until suitable buildings or a court house and jail can be provided, in which the courts can or may be held. The law does not require impossibilities. It imposed the duty on the judge of the circuit, which included Ozark, to hold his courts in that county at stated terms. This duty could not be performed by holding his courts in Gainsville, the seat of justice, because there was neither court house nor any other house in that town in which they could be held. It does not appear, except inferentially, that a court house had ever been erected in Gainsville, and the presumption might well be indulged, from the action of the county court in October, 1866, in ordering a suitable place to be selected and rented as near the county seat as practicable, in which to hold the courts of the county, that no court house had been provided or erected. The record shows that the county court did act in this matter, and

> directed the place to be selected by the sheriff in which to hold the courts of the county; that the place selected by him was approved by the court; and that the court, at which the judgment in question was rendered, was held at the place thus selected and approved. To hold that a judgment rendered at such terms was absolutely void would be to reverse the rule of presumption, and presume that jurisdiction of the person and subject matter having been acquired, everything was irregularly, instead of regularly, transacted. * * *"

For further discussion of the validity of proceedings of circuit court at places other than the courthouse, see State ex rel. Green v. James, 355 Mo. 223, 195 S.W. (2d) 669.

CONCLUSION

It is, therefore, the opinion of this office that the County Court of Dallas County may, by proper order, designate some other building within the seat of justice of Dallas County as the place to hold circuit court, and that prior to holding court at such new place the sheriff should make proclamation of the new place of holding court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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