COUNTY COURTS:
CONTRACTS:

A letter to a county court by an authorized officer of a construction company, offering to do certain work for the county for the actual cost of labor and materials plus 10%, and an entry made subsequent to the receipt of such letter by the county court accepting such offer, sufficiently constitute a written contract to comply with that requirement of Section 432.070, RSMo 1949, that such contracts "shall be in writing."

February 25, 1960

FILED
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Mr. John A. Honssinger
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"This office respectfully requests an opinion of your office pertaining to the applicability of certain portions of Section 432.070, R. S. Mo., 1949, to the following set of circumstances:

"On December 14, 1959, this office requested an opinion as to whether or not the County Treasurer would be liable on his bond for costs incurred by the County Court for repairs to the Court House in an amount exceeding $500.00 when there were no bids taken. I received in yesterday's mail a letter from your office, together with the two opinions pertaining to this issue. The opinion to Harold Miller, Prosecuting Attorney of DeKalb County, pertained to the applicability of Section 50.660, R. S. Mo., 1949, and seems to answer a certain phase of my opinion request. However, your letter of January 12, 1960, goes on to state that a conference with members of the County Court of Laclede County determined that no contract in writing was entered into in this situation. Your office then kindly sent me an official opinion formerly issued to Richard Moore concerning this phase of the problem, and the applicability of Section 432.070.

> "I have been advised by our County Court that there were certain written matters pertaining to this situation. I am enclosing a copy of same herewith. These documents include a photostatic copy of a letter from the contractor on this project, Ward Krudwig, to the County Court under date of August 21, 1959. My second enclosure is a certified copy of the record of the County Court referring to Mr. Krudwig's letter. With this information as a background, I would request an opinion as to whether or not the two enclosed documents constitute a sufficient contract in writing to comply with the provisions of Section 432.070."

We first direct attention to Section 432.070, RSMo 1949, which reads:

> "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."

There is no question here of the power of the county court of Laclede County to contract for the work which was done, such contract obviously being within the scope of its powers. Clearly, too, the contract which was made was upon a consideration wholly to be performed or executed subsequent to the making of the contract. Neither is there any question that the work contracted for was done in a satisfactory manner or that the amount to be paid to the contractor was not reasonable and proper.

The only question here involved is whether the contract which was made between the county court of Laclede County and

the Krudwig Construction Company conformed to that portion of Section 432.070, supra, which requires that such contract shall be "in writing."

What occurred was that the county court, in the proper discharge of its duties as custodian of county property, examined and discovered that repairs needed to be made to a portion of the courthouse. They, thereupon, invited Ward Krudwig of the Krudwig Construction Company to make an examination of the building with the object of determining what would have to be done and the cost thereof of making the necessary repairs. Mr. Krudwig, following an examination of the building, reported to the county court that because of certain conditions existing it was impossible for him to determine how extensive or how costly the repairs would be, and that such determination could only be made after he had gotten well into the work and had discovered conditions existing beneath the outer wall of the building. It is evident from documents to which we shall soon direct attention, that an agreement was reached between Krudwig and the county court that he would make the necessary repairs, whatever they had to be, on a cost plus basis, that is, the cost of the material and labor plus ten per cent. On August 21, 1959, substantiating this oral agreement, Mr. Krudwig wrote as follows:

> "Aug. 21, 1959
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> "Laclede County Court
> Lebanon, Missouri
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> "Gentlemen:
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> "As per your request and confirming our agreement concerning the repair of the rear wall to the Laclede County Court House. I regret that I can not give you an exact cost for the repairs due to the uncertain conditions I might encounter in removing the bricks and replacing them. I will however do the work as per our agreement which is the cost of all labor, materials, equipment and insurance plus 10%."

Following receipt of the above letter the following action was taken by the county court:

"Agreement: Krudwig Construction Co.

"As per letter of 8-21-59, Court agrees to let Krudwig Construction Co. repair courthouse wall at cost, plus ten per cent.

"Recorded in Book 4, page 546.

/s/ A. C. Brockman, Presiding Judge
/s/ Henry G. Hooker, Associate Judge
/s/ A. W. Parks, Associate Judge

"Attest: /s/ Preston Schmoutey, County Clerk."

These were all of the written documents pertaining to this contract and the quotation which we have to answer is whether they are sufficient to meet the requirment of Section 432.070, supra, which requires that such a contract as is here under consideration "shall be in writing."

In the first place, we would note that the requirement of the above section that such contracts be in writing is very rigid. In the case of State v. Miller, 297 S.W. 2d 611, the Kansas City Court of Appeals stated (l.c. 614 [1, 2]):

> "How do the foregoing facts conform to the requirements prescribed by the law to safeguard the funds of the county? In the first place the law requires such contracts to be in writing. Section 432.070. Absent the required writing, such contracts 'have been held void and performance by the other party ineffectual to create legal liability on the political subdivision on the theory of ratification, estoppel or implied contract [citations].' Elkins-Swyers Office Equipment Co. v. Moniteau County, 357 Mo. 448, 456, 209 S.W. 2d 127, 131. See, also, Carter v. George, 216 Mo. App. 308, 264 S.W. 463; Cook v. St. Francois County, 349 Mo. 484, 162 S.W. 2d 252, 254; Missouri-Kansas Chemical Co. v. Christian County, 352 Mo. 1087, 180 S.W. 2d 735, 736. One dealing

> with the county is deemed to know of such restrictions imposed by law on such transactions. Riley v. City of Rock Port, Mo. App., 165 S.W. 2d 880; Hillside Securities Co. v. Minter, 300 Mo. 380, 254 S.W. 188, 193."

The same holding has been made in the case of Grauf v. City of Salem, 283 S.W. 2d 14 (l.c. 18 [9]); State v. Crain, 301 S.W. 2d 415 (l.c. 419 [4, 5]); Fleshner v. Kansas City, 156 S.W. 2d 706 (l.c. 707 [3]), and many others. While the above cases are absolute in their requirement that a contract such as this shall be in writing they do not go very much into the matter of what writing, in what form and kind such a contract must be.

In regard to this phase of the matter we direct attention to the case of Burger v. City of Springfield, 323 S.W. 2d 777, an opinion rendered by the Missouri Supreme Court in 1959. In that case the plaintiff sought to recover $100,000.00 for personal services rendered the City of Springfield as a negotiator in the purchase of the property of the Springfield City Water Company, a public utility.

Plaintiff alleged, and his allegation in this respect was not denied, that on June 25, 1956, the city council of the City of Springfield, Missouri, duly passed and the mayor signed a resolution which read in part:

> "Whereas, it is desirable that the City of Springfield, Missouri, be represented by a suitable person in negotiating the proposed purchase of the Water Works; Now Therefore, Be It Resolved by The Council of the City of Springfield, Missouri, as follows:
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> "That the Water Works Committee of the Council be and it is hereby authorized to employ a suitable person to represent the City in such negotiations and a reasonable compensation for services and expenses to be fixed by the Council upon the completion of his services."

Thereafter, the mayor of the City of Springfield, a member of the Waterworks Committee, wrote to the plaintiff informing him that he had been selected to represent the city in its negotiations with the Springfield City Water Company. At this point we quote from the opinion (l.c. 778):

> " * * * In one letter it was stated: 'The Water Works Committee of the Springfield City Council has, in accordance with the authority granted in a resolution adopted last night (a copy of which is enclosed), unanimously appointed you to represent the City in negotiations with the Springfield City Water Company for the purchase of the water works by the City.' In the other letter the then-Mayor stated, 'It is our understanding that the City will expect to pay you fair compensation for your services in the matter, the compensation to be agreed upon between you and the City Council when the matter is completed. If this is not your understanding of the agreement, please let me know at once. This is the understanding Mr. Wann had after his second conversation with you; that you could not fix a fee in advance, but that you would rely on the fairness of the Council in agreeing upon a fair and reasonable fee.' The letter closed with this statement: 'I am enclosing a formal notification of your appointment, also, a copy of the resolution.'
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> "On June 28, 1956, plaintiff replied by letter, in part, as follows: 'I wish to acknowledge your letter of June 26 stating that the Water Works Committee of the Springfield City Council had appointed me to represent the City of Springfield in negotiations with the Springfield City Water Company for the purchase of the water works by the city. I hereby advise you of my acceptance as negotiator on the basis and terms as set out in your letter of June 26 * *.'"

Thereafter, plaintiff entered upon his duties as negotiator and successfully negotiated and completed the work which he had

contracted with the city to do. Thereafter, the plaintiff presented his claim to the city for services and the city denied any liability whatsoever because there was not compliance, from the standpoint of a written contract, with Section 432.070, supra.

At l.c. 780 of the Burger opinion the court, after quoting Section 432.070, supra, states:

> "With reference to this statute the court in Aurora Water Co. v. City of Aurora, 129 Mo. 540, 578, 31 SW 946, 955, said: 'Touching the objection that the contract was not made in writing, in conformity with section 3157, Rev. St. 1889, it is enough to say that the ordinance having been passed as required by law, which ordinance set forth the terms of the contract, and that ordinance being approved by the requisite vote, and then accepted by the person or persons proposing to build the works, constituted a completed contract. * * * Under the rigid rule established by the statute of frauds, it was not necessary, in order to make a contract binding, that it should be all contained in one paper signed by the party to be charged; but the terms of the contract may be contained in one paper, and the signature may be found in some other paper, provided that such second paper properly refer to the terms of the containing paper. Fry, Spec. Perf. [3 Ed.], sec. 520. Numerous instances have occurred where letters have constituted the contract, the written evidence of and acceptance of it. Ib., secs. 270, 529. It surely was never intended by the legislature that a rule of greater stringency should be applied in instances like the present, than in those just instanced.' And see State ex rel. Kansas City Ins. Agents' Ass'n v. Kansas City, 319 Mo. 386, 4 SW2d 427, 430(3).
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> "It appears, therefore, that the contract sued on in this case was in writing. The resolution in question was pleaded. The resolution is alleged to have been duly adopted by the City Council, approved by the Mayor and duly signed, and a copy was attached to the amended petition.

Honorable John A. Honssinger

> Notification of appointment and acceptance thereof were alleged to have been in writing and copies of the signed letters were attached. The formal execution of the contract was sufficient. * * *"

It would appear to us that there is a great deal of similarity between the fact situation in the instant case and between the Burger case and the case of Aurora Water Company v. City of Aurora, quoted in the Burger case. In the instant case, as we have pointed out, there was a definite offer to perform a service by the contractor to the county, and there was an acceptance by the county of such offer, which acceptance was evidenced by the entry set forth above in the county court records. We believe that this action by the contractor and the county was sufficiently similar to the actions taken in the Burger case and the City of Aurora case, in both of which it was held that a written contract was made, to constitute a contract "in writing" as that term is used in Section 432.070, supra.

CONCLUSION

It is the opinion of this department that a letter to a county court by an authorized officer of a construction company, offering to do certain work for the county for the actual cost of labor and materials plus ten per cent, and an entry made subsequent to the receipt of such letter by the county court accepting such offer, sufficiently constitute a written contract to comply with the requirement of Section 432.070, RSMo 1949, that such contracts "shall be in writing."

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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