COUNTIES:
COUNTY COURTS:
COUNTY POORHOUSE
AND INFIRMARIES:

(1) County court has authority on behalf of its county to acquire site for county poorhouse or infirmary.

(2) Such site need not be within the corporate limits of the county seat of such county.

FILED
43

April 11, 1955

Honorable William L. Hungate
Prosecuting Attorney
Lincoln County
Suite 102 - Troy Building
Troy, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office reading as follows:

> "I would appreciate your opinion on the following question. Does a County Court have power to acquire unimproved real estate for the purpose of erecting a County Poorhouse or Infirmary? I have assumed the answer to this question is 'yes' relying on the provisions of Section 49.350 of the Revised Statutes of Missouri for 1949. My next question is: May land a County acquires for such a poorhouse or infirmary site be located anywhere within its territorial limits, or must such a site be located within the original town or corporate limits of the County seat?
>
> "It is the second question which is giving me a great deal of difficulty in view of Sections 49.370 and 49.380, the Revised Statutes of Missouri for 1949.
>
> "I suppose it is as common throughout the State as it is in this section of Missouri that most counties either do own or have owned institutions known as the County Poor Farm. Naturally, these farms were normally located out in the County and seldom, if ever, located within the corporate limits of the County Seat. Under the present rules of the Federal and State Welfare Departments, it is highly advantageous to the various counties to dispose of these old farms and to acquire more modern buildings on smaller tracts of land for the care of our increasing aged population. The occupants of such places receive

better treatment and care and the County reaps large financial benefits in that such an institution may then be licensed privately and a major portion of the costs of caring for the patients is borne by the State and Federal Governments. These institutions are also then subject to inspection by the State, whereas County operated institutions are not. This, too, tends to result in a higher standard of care.

"Our County Court has inspected and discovered several desirable sites with all modern facilities readily available but none of these more desirable sites are located within the corporate limits of the County Seat.

"I think you will note that the history of Section 49.350 indicates the provision whereby Courts were empowered to purchase poor house or infirmary sites for the County was first enacted in 1909, while Sections 49.370 and 49.380 were first enacted in 1825 and 1820 respectively. It would thus appear that they were primarily concerned with jails and courthouses at the time of their enactment and such a requirement could be readily understood and I wondered if perhaps Section 49.350 passed in 1909 had repealed or supplanted Sections 49.370 and 49.380 by implication at least insofar as poorhouse and infirmary sites are concerned.

"Thanks for your consideration of this question. With kind regards, I am."

Your first question we believe to be answered by the provisions found in Section 49.350, RSMo 1949, reading in part as follows:

"The county court of any county in this state shall have power to acquire by purchase, for such county improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary;* * *"

Here is a clear delegation of authority to the county court to acquire unimproved real property for the purpose mentioned in your request. The language is definite and unambiguous and in the

circumstances no occasion arises for construction of the statute. In this regard your attention is directed to what was said by our Supreme Court in State ex inf. Rice ex rel. Allman et al. v. Hawk, et al., 228 S. W. (2d) 785, from which we quote, l.c. 789:

> "* * * The language of the statute is clear and unambiguous, and we have no right to read into it an intent which is contrary to the legislative intent made evident by the phraseology employed. State ex rel. Jacobsmeyer v. Thatcher, 338 Mo. 622, 92 S. W. 2d 640; St.Louis Amusement Co. v. St. Louis County, 347 Mo. 456, 147 S. W. 2d 667. * * *"

In regard to the second question presented in your opinion request it is thought best to first call attention to Section 205.640 of Chapter 205, the County Health and Welfare Chapter in the RSMo 1949. This section was originally enacted in 1845. It is as follows:

> "The several county courts shall have power, whenever they may think it expedient, to purchase or lease, or may purchase and lease, any quantity of land in their respective counties, not exceeding three hundred and twenty acres, and receive a conveyance to their county for the same."

The next succeeding section of the County Health and Welfare Chapter, Section 205.650 also originally enacted in the laws of 1845, is as follows:

> "Such county court may cause to be erected on the land so purchased or leased a convenient poorhouse or houses, and cause other necessary labor to be done, and repairs and improvements made, and may appropriate from the revenues of their respective counties such sums as will be sufficient to pay the purchase money in one or more payments to improve the same, and to defray the necessary expenses."

In the event the authority for the acquisition of a county poor farm was not taken from the express wording of Section 49.350 supra, such authority could be considered as expressly granted by the two above sections. It is found that Section 49.350 was enacted in 1909. Sections 205.640 and 205.650 were enacted in 1845 and were incorporated in the portion of the laws concerning support

of the poor by the counties.

Section 49.350 RSMo 1949 was originally enacted in 1909 and is partially quoted here for reference. It is as follows:

> "The county court shall have power to acquire by purchase, for such county, improved or unimproved real estate for a site for a court house, jail or poorhouse or infirmary; or, when the county owns such sites, to acquire by purchase improved or unimproved real estate as an addition to or enlargement of the same."

The remainder of the section then empowers the county court to acquire the needed property by condemnation, if necessary. It is difficult to imagine that such authority had not been previously vested in the court. Historically this section was first enacted in 1909. That power of the county court may have existed previously. However, it does not concern the present question.

The same chapter of the Revised Statutes of 1949 contains, in regard to the powers of the county court, the following Section 49.370:

> "The county court shall designate the place whereon to erect any county building, on any land belonging to such county, at the established seat of justice thereof."

The history of this section shows that it is from the Revised Statutes of 1825, page 258, Section 3. The reason for this section's direction to county courts is apparent. In State ex rel. Norman v. Smith, 46 Mo. 60, l.c. 64, in regard to the location of a court house, the court said:

> "The record here declares the fact to be that buildings were erected at the original county seat, and had been in steady and constant use for about seventeen years.
>
> "Can it be said that the railroad addition to which the sittings of the court has been removed is the seat of justice, within the meaning of the law? It is true that an addition to a town for some purposes becomes a part of the town itself, and, when incorporated, the municipal regulations are generally extended alike to

> both. But there are some peculiar circumstances incident to the location of a seat of justice which are not applicable to subsequent additions. Where donations are made as inducements to any particular location, they are founded upon a supposed advantage that will accrue in favor of the place selected. Upon the idea that the county buildings will remain, and the location be permanent, people invest their money and acquire property; and to allow a court, without pursuing the course provided by law, to change the sessions to some other or rival location, would be a breach of faith and an act of injustice.* * *"

It can be seen from the context of the above quotation that there is definite reason for the courthouse to be located at the seat of justice of the county. It may as easily be realized that the county jail be so located. However in regard to county poorhouses Section 205.640, supra, was first enacted in 1845, permitting the county court to purchase or lease land - "not exceeding 320 acres." It required the land to be "in the respective counties."

Section 205.650 supra, enacted at the same time, 1845, empowers the county court to cause a poorhouse to be erected on the lands so purchased or leased. These two sections, enacted as they were twenty years after the original of Section 49.370 supra, certainly must be interpreted as special statutes and 49.370 as a general one referring to the powers of the county courts generally in regard to county buildings.

It has been often stated that the law does not favor repeal by implication, that statutes relating to the same subject must be treated prospectively and construed together. There is no doubt conflict between the "any county building. . . . at the established seat of justice thereof" of Section 49.370 supra, and "the county court shall have the power whenever they may think it expedient, to purchase or lease . . . . any quantity of land in their respective counties, not exceeding three hundred and twenty acres" of Section 205.640 supra. It is not believed that the intent of the legislature was to require the county court to locate the poor farm within the limits of the county seat. An example of court treatment of statutes in a conflict such as above may be found in State ex rel. City of Springfield v. Smith, 125 S. W. 2d 833, 344 Mo. 150, where, at l.c. 154-155, it is said:

> "(3) It is familiar doctrine that when there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving

> effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.* * *"

It is then believed that the obtention of land and the establishment of a county poor farm may be considered as an exception to the requirement that county buildings be built in the county seat.

## CONCLUSION

In the premises, we are of the opinion:

1. That a county court may on behalf of its county acquire unimproved real property to be used as a site for the erection of a county poorhouse or infirmary; and

2. That such site need not be located within the corporate limits of the "county seat" or "established seat of justice" of such county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James W. Faris.

Very truly yours,

JOHN M. DALTON
Attorney General

JWF/ld