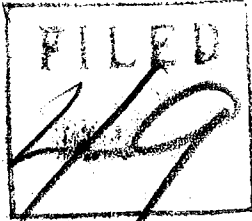


PROSECUTING ATTORNEYS:  
FORFEITURES:  
SCHOOLS:

The prosecuting attorney of the county is not required to bring a civil action for forfeitures provided under Sections 445.070, .080 and .090, RSMo 1949. Such forfeitures in this case are for the reorganized school district.



May 11, 1955

Honorable John C. Kibbe  
Prosecuting Attorney  
Moniteau County  
California, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"I am interested in a construction of 1949 MRS Section 445.070, Subsection 1, and Section 445.090, which provide a forfeiture of a sum not to exceed \$300.00 for selling a city lot, before such lot is platted, and Section 445.080, which provides that any forfeiture may be recovered by civil action in the name of the county to the use of the school fund. From the paucity of case law construing these sections, it would appear that they have not been used to any great extent. Our city council here in California does wish enforcement of these statutes in the future, and I wish to request your opinion concerning the following questions:

- "1. Is the forfeiture provision constitutional?
- "2. Is it the duty of the prosecuting attorney to file civil actions to enforce such forfeiture?
- "3. When the school district involved is a reorganized district, of which only part is within the city limits, is the

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forfeiture still recovered for the use  
of such district?

"Your opinion concerning these matters will  
be greatly appreciated."

You first inquire as to the constitutionality of said forfeiture provisions. It appears to be constitutional; however, we are not passing on that particular question, as it has long been the policy of this department to decline to pass upon the constitutionality of statutes and presume that all laws are constitutional until held otherwise by the courts, except on possibly a few questions of grave importance to many persons and occasional requests from the General Assembly as to the constitutionality of statutes and proposed legislation necessary for enacting laws.

Volume 50, American Jurisprudence, Section 170, pp. 149-150 lays down the general rule as follows:

"The rule that every legislative act is  
presumed to be constitutional, and that  
every intendment must be indulged by the  
courts in favor of its validity, \* \* \*"

Volume 43, American Jurisprudence, p. 97, Section 284, in part reads:

" \* \* \* According to the view generally  
taken, judicial officers are protected from  
liability for judicial acts even though  
done under the authority of invalid or un-  
constitutional statutes or ordinances. \* \* \*"

Furthermore, Southerland on Statutory Construction, Volume 1, Section 1706, reads in part:

" \* \* \* In deciding the constitutionality  
of a statute alleged to be defectively  
titled, every presumption favors the  
validity of the act. \* \* \*"

You next inquire whether it is the duty of the prosecuting attorney to file a civil action to enforce such forfeitures. The particular statutes relating specifically to such forfeitures are Sections 445.070, 445.080, and 445.090, RSMo 1949. The former statute, in subsection 1 thereof, provides for a forfeiture not exceeding \$300.00 against any person selling or offering to sell any lot prior to the making of a plat, acknowledging and recording same. The second statute relates specifically to the making of an imperfect map or plat, which does not set forth and describe all parcels of ground which have been or shall be promised or set apart for public uses. Furthermore, said statute provides the procedure for recovering forfeitures arising

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under Chapter 445, which shall be by civil action in the name of the county to the use of the school fund of the incorporated city, town or village in which the land lies or the county, as the case may be. The latter statute, Section 445.090, provides that such forfeiture may be recovered by attachment or otherwise in like manner and for like causes as in ordinary cases.

These sections read as follows:

445.070

"1. If any person shall sell or offer for sale any lot within any city, town or village, or any addition thereto, before the plat thereof be made out, acknowledged and recorded, as aforesaid, such person shall forfeit a sum not exceeding three hundred dollars for every lot which he shall sell or offer to sell.

"2. Such maps or plats of such cities, towns, villages and additions made, acknowledged, certified and recorded, shall be a sufficient conveyance to vest the fee of such parcels of land as are therein named, described or intended for public uses in such city, town or village, when incorporated, in trust and for the uses therein named, expressed or intended, and for no other use or purpose.

"3. If such city, town or village shall not be incorporated, then the fee of such lands conveyed as aforesaid shall be vested in the proper county in like trust, and for the uses and purposes aforesaid, and none other."

445.080

"If any person, his agent or attorney, shall cause a map or plat of any such city, town, village or addition thereto to be recorded, which does not set forth and describe all parcels of ground which have been or shall be promised or set apart for public uses, such persons shall forfeit double the value of the ground so promised or pretended to have been set apart for public uses, and

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not set forth on the plat. The forfeitures arising under this chapter may be recovered by civil action, with costs, in the name of the county to the use of the school fund of the incorporated city, town or village in which the land lies, or the county, as the case may be."

445.090

"The property and effects of the person incurring such forfeiture may be proceeded against, by attachment or otherwise, in like manner and for the like causes as in ordinary cases."

Under Section 56.060, RSMo 1949, listing the official duties of the county prosecuting attorney, it requires him to commence and prosecute all civil and criminal actions in their respective courts in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state and county.

This opinion request specifically refers to city lots in the city of California, Missouri, a city of fourth class; therefore, this opinion rules only as to duties of the prosecuting attorney in such regard.

The foregoing statute, Section 445.080, provides this action for forfeiture shall be in the name of the county for use of the school fund of the incorporated city, town or village wherein the land lies. The county or state is not directly the beneficiary of any such forfeiture, but the beneficiary is the school board wherever said land may be located. Therefore, in view of this construction, we are forced to the conclusion that Section 56.060, supra, is not authority for requiring the county prosecuting attorney to prosecute such forfeitures as one of his statutory duties.

Since the property in question is partly within the city of California, Missouri, and the schools in that city belong to and are within a reorganized school district, we are of the opinion it should go to the reorganized school district.

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CONCLUSION

Therefore, it is the opinion of this department that it is not the statutory duty of the county prosecuting attorney to proceed to bring a civil action of this nature for the recovery of forfeitures under the foregoing statutes, where the land in question is in an incorporated city; that such forfeitures should be instituted by the beneficiary, in this instance, the reorganized school district. Furthermore, when and if such forfeiture is recovered, in this instance it shall go into the fund of said reorganized school district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton  
Attorney General

ARR/vtl