

HOSPITALS; Tuberculosis: Article 6, Section 36 of the Constitution does not so invalidate the terms of Article 2, Chapter 120, R. S. Mo. 1929, that a county tuberculosis hospital cannot be built and maintained.

March 29, 1940.

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Dear Sir:

This will acknowledge receipt of your letter of March 15th, 1940, asking for an opinion on a matter pertaining to the construction of a county tuberculosis hospital. The question presented concerns the authority to construct such a hospital in view of the provisions of Article 6, Section 36 of the Missouri Constitution and the construction placed thereon in State ex rel. Bucker v. McElroy, 274 S. W. 749 (Mo. Sup.).

Article 6, Section 36 of the Missouri Constitution 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. (Underscoring ours.)

State ex rel. McElroy, supra, was a suit to test the authority of the Legislature to vest control of sundry public, penal and eleemosynary institutions in a parole board consisting of the judges of the Circuit Court of Jackson County, Missouri. The only function left to the county court was to pay the expenses contracted and incurred by the parole board in the operation, management and maintenance of these institutions. The court, in ruling the point against the parole board, said, l. c. 751, 752:

"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; i.e., that it shall transact all county business. By Section 2574, R. S. 1919, such court is given control of all county property, both real and personal, and with it the added authority to purchase, lease, and receive by donation any property, real or personal, for the county. Likewise we find the power to sell property belonging to the county, and to audit and settle all demands against the county. Much of this section has stood for many years, and is and was a legislative construction of the Constitution when it speaks of transacting county business. The lawmakers understood that the transacting of county business meant the control of all county property, whether such property was in the nature of either penal or eleemosynary institutions. The lawmakers would have just as much power to place the county jail, or the poor farm, under the control of a parole board, as they would have to place the three institutions mentioned in the pleadings herein, or, to broaden the field, the divers state eleemosynary and penal institutions of the state could as well be placed in a board of supreme or circuit judges."

Thus, if the provisions of Article 2, Chapter 120, R. S. Mo. 1929, attempt to take away from the county court the right to transact county business the said statutes are void because there can be no question but what the erection, operation and maintenance of a county tuberculosis hospital is county business.

The statutes contained in the Article and Chapter above referred to make provisions for the county court to call a special election for the purpose of voting bonds to construct a tuberculosis hospital if five per cent of the voters of the county so petition the court. If two-thirds of the votes cast at said election are in favor of the bonds the court is to issue them and include in the annual tax a levy sufficient to pay the

interest and retire the bonds within twenty years. The bonds are to be sold by the county court to the highest and best bidder. (Section 13956, R. S. Mo. 1929).

The statutes next direct the county court to appoint a tuberculosis hospital board of five members within sixty days after the bond election. The court fixes the terms of the newly appointed members and may remove for cause any board member. The hospital board so appointed is to select a treasurer who is to give bond, to be approved by the prosecuting attorney and the county court, to secure the faithful accounting for all moneys coming into his hands as treasurer of the tuberculosis hospital. This board is vested with "exclusive control of all moneys collected to the credit of the tuberculosis hospital fund, * * * and all moneys received for such hospital purposes, whether by sale of bonds or by appropriation from the taxes collected * * * for * * * said hospital, or from any other source, shall be turned over to the treasurer of said board". (Section 13957, R. S. Mo. 1929).

The treasurer is to account to the board monthly for the funds in his hands and a copy of the report to the board is required to be filed with the clerk of the county court. The board is authorized to employ the necessary employees and fix their compensation and is required to keep an office in the county where all records shall be kept open to public inspection at reasonable hours. Annually the board must report to the county court its receipts, the source and how said money was expended. (Section 13957, R. S. Mo. 1929).

The board is empowered to adopt the plan for the building and enter into the contract for the construction of said building. (Section 13958, R. S. Mo. 1929).

Said board has power of eminent domain equal with that of private utility corporations. (Section 13960, R. S. Mo. 1929).

The determination of what patient shall be admitted and the cost of the services rendered is left to the board. (Section 13961, R. S. Mo. 1929).

From this summary of the statutes it appears that all functions pertaining to the raising of money for the erection, operation and maintenance of the hospital is

left to the county court, but that the letting of the contract to erect the hospital building and the expenditure of the funds raised for that purpose and for maintenance and operation is left to the hospital board. The only control left to the county court over the expenditure of the funds and the erection of the building is indirectly in that, that the court has the power to remove board members for cause and the yearly report required to be made by the board to the county court.

There is nothing in the act relative to raising funds for hospital that contravenes Article 6, Section 36 of the Constitution, since that function is left solely to the county court, and, even if we concede that those provisions of the act giving exclusive control of the expenditure of all funds are void, that does not prevent the erection of the hospital. The county court, under its constitutional power to transact county business, may join with the hospital board in adopting plans for a building and entering into a contract for its construction, and thus obviate any objection that may arise from that source.

It can hardly be said that the vesting in the board the power to hire employees and make rules for the conduct of the hospital is void for the reason that that function is county business which the court must transact. The Constitution does not contemplate that the court shall attend to every detail of court affairs. Examples of this are: the county health physician, county clerk, superintendent of county farms, agent to see after school fund property, and many others that transact county business under the supervision of the county court, but in none of the instances mentioned does the court attend to every detail. The court could not be expected to do so in the case of the operation of a hospital since that requires technical knowledge that could only be found among members of the medical profession.

It is the rule in this state that where a statute or act is susceptible to two constructions and one will cause it to be unconstitutional, then the courts will construe the statute or act in the way that will cause it not to contravene the Constitution. *State ex rel. Gorman v. Offutt*, 26 S. W. (2d) 830 (Mo. App.); *State ex rel. McAllister v. Dunn*, 277 Mo. 38. We think Article 2 of

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Chapter 120, R. S. Mo. 1929, is susceptible to two constructions and have applied the one that will obviate any doubt about the validity of the law. That construction is that the board, in building, operating and maintaining a tuberculosis hospital, acts as the mere agent of the county court and as such its actions would be subject to the control of the county court.

CONCLUSION.

Therefore, it is our opinion that Article 6, Section 36, of the Missouri Constitution, requiring all county business to be transacted by the county court, does not prevent the construction, maintenance and operation of a county tuberculosis hospital under Article 2 of Chapter 120, R. S. Mo. 1929, since the court, under its constitutional powers, may join with the hospital board in taking action to erect said hospital, and that thereafter the actions of the board are subject to the constitutional power of the county court.

Respectfully submitted,

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APPROVED:

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LLB:CP