COUNTY COURTS:

OLD AGE ASSISTANCE: Old Age Assistance Board is not entitled to compensation. County Court has no authority to make donations to them, but is not liable for making such donations if made in good faith under the belief they have authority so to do.

2-6

January 28, 1936.

FILED
57

Hon. G. Logan Marr,
Prosecuting Attorney,
Morgan County,
Versailles, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

> "The County Court made a donation in cash to the county old age assistance board. Now the board comes back, and wants to hold the County for a salary in the amount of $4.00 per day.
>
> "After reading section 3, page 309 of the 1935 session acts, it appears that the board is not entitled to any compensation. Just what is meant by compensation? Is there any legal way for the county court to even make a donation for the services of the county pension board?
>
> "Is the County Court liable for the donation already made to the county pension board?
>
> "Can the board allege that their expenses are such that they are entitled to $4.00 per day? The State Old Age Commissioner has been allowing this local county board necessary and actual expenses.
>
> "If you have issued other opinions, let me have a copy."

We construe your questions to be: First, are the members of the Old Age Assistance Board entitled to a salary from the county for the performance of their official duties thereon; second, does the law authorize the county court to make a donation from the county revenues for the services of the members of the Old Age Assistance Board, and, third, if it does not so authorize them and they issue warrants in favor of the members of such Old Age Assistance Board in furtherance, as they think, of the administration of the Old Age Assistance Act, are the judges of the county court personally liable for the money so paid out on said warrants?

Your first question appears to be answered by an opinion of this department dated October 10, 1935, to Mr. Arthur C. Mueller, Prosecuting Attorney of Gasconade County, in which it was held "that the members of the County Old Age Assistance Board are only entitled to the necessary expenses incurred for meals while performing their duties, not to exceed the maximum amount fixed by the Old Age Assistance Division", and in which it is stated that the county boards serve without compensation except the necessary expenses incurred while engaged in the performance of their duties. A copy of said opinion is herein enclosed.

Likewise, an opinion rendered by this office of date December 23, 1935, to Hon. John J. Wolfe, Associate Prosecuting Attorney of St. Louis County, holds that the county court can not relieve itself of the duties imposed by statute, relative to the poor, by delegating its duties to a board established by it, a copy of said opinion being enclosed herein.

Your third inquiry appears to be on the border line.

Section 36 of Article VI 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."

In the case of Knox County v. Hunolt, 110 Mo. 67, the court had under consideration the liability of the members of the county court to repay county school funds which had been used by the county for other county purposes, and in that case it was held that such court had no discretion by which they could apply the fund to the payment of ordinary county debts. The court said, l. c. 76:

> "It can make no difference that the act was not corrupt or a wilful violation of the law, and so the trial court ruled. This fund should be replaced by those who diverted it."

At page 75 the court says:

> "But where the public officer is by law vested with discretionary ministerial powers, and he acts within the scope of his authority, he is not liable in damages for an error in judgment, unless guilty of corruption or a wilful violation of the law. He is not liable for an honest mistake."

But the court there held that there was no discretion lodged in the county court as to the use to which such school money should be applied, and that the use of such funds for the payment of ordinary county debts was an act in direct violation of the Constitution and laws creating that fund, and was therefore nothing short of malfeasance.

Likewise in the case of Consolidated School Dist. No. 6 v. Shawhan, 273 S. W. 182, the Supreme Court of this state holds the directors of a school district liable for using that part of the school district funds which made up the teachers' fund for other school purposes.

It appears to us that those cases are not applicable to your third question.

The county court derives its authority from the State Constitution, supra, and from other statutes passed which are consistent with the constitutional provisions.

In the case of State ex rel. Mitchell v. Rose, 281 S. W. 396, the Supreme Court of Missouri en Banc (1926) held that the county court had the constitutional authority to review and audit county bills, and the duty to look after public funds, examine, audit, adjust and settle all accounts, and pay sums found due on such accounts, and that the Legislature could not by passing a law stating that "the amounts of money due and payable to the registrars under the provisions of this section shall be certified to the county courts, which courts shall pay the same by warrant drawn upon the county treasurer and payable out of the contingent fund of the county", require the county court to pay such certified amounts, but that the county court has the constitutional authority to pass on such bills, saying, l. c. 397:

> "The various provisions of the Constitution and statutes (articles 6, Sec. 36, Const. of Mo., and sections 2574 and 9560, R. S. Mo. 1919) demonstrate that it is not only within the power, but is the duty, of the county court to look after public funds, examine, audit, adjust, and settle all accounts to which the county shall be a party, and to pay out of the county treasury any sum of money found to be due by the county on such accounts; in short, responsibility for the safety of public funds, the accuracy and honesty of accounts, and statements of officials, is imposed on the county courts. It is for the county court to audit the claim of the relator to determine the correctness of same and to say whether it will demand that the correctness of the reports made to it by the state registrar shall be decided by the judicial department of the government before payment is made. State ex rel. Forgrave v. Hill et al., 198 S. W. 844, 272 Mo. 206, loc. cit. 213."

Section 12950, R. S. Mo. 1929, provides:

> "Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 12953 provides:

> "The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

By Section 12954 the county court has discretion as to the granting of relief to all persons, the statute providing:

> "The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

In the case of Scotland County v. McKee, 168 Mo. 282, a party was a resident of Quincy, Illinois, and not entitled as a matter of right to be sent to the asylum at the expense of the county, and the court entered an order of record to that effect. The next day the county court decided to send the patient to the asylum, other parties on her behalf furnishing a bond to the county that they would pay $50.00 per year toward such expenses. The court, l. c. 287, said:

> "But in this instance the county court, doubtless under the importunity of the legal guardian and of the father of the person, concluded that it had some discretion and could afford partial relief, not under the statutes relating to the asylum, but under the authority of section 6583, Revised Statutes 1879, relating to poor persons: 'The county court shall, at all times, use its discretion, and grant relief to all persons, without regard to residence, who may require its assistance.' So the court, after having first refused the application, on reconsideration concluded that it was justified in granting some relief, though not all that was first asked, and made the order under which the unfortunate person was sent to the asylum under express contract with her father, the defendant herein, evidenced by his bond in this suit that he would pay $50.00 yearly of the expense. The court was not bound to have done anything for the relief of the insane person, but had authority under that statute to exercise its discretion and grant some relief on such terms and conditions as it saw fit."

In the case of State ex rel. v. Diemer, 255 Mo. 336, the county court had employed a highway engineer on an agreement to pay him $1200.00 for the year's salary, and entered into a contract to that effect, but stated to him that if at the end of a year he had well performed his duties and demonstrated his competency by actual services, they would pay

him an additional $300.00. He accepted the proposition and the court entered of record an order appointing him for a term of three years and fixing his salary at $1200.00. At the end of the year he presented his account for $300.00 additional pay for services and the court investigated his work and found that he had well and intelligently performed his duties, and allowed his claim. It is admitted that they acted in good faith. Thereafter suit was brought against the judges of the county court to recover this $300.00 as illegally paid by them. The Supreme Court, speaking through Lamm, J., declined to authorize recovery, saying, l. c. 353:

> "In the next place, county courts in Missouri are by name vested with judicial power. (Constitution, sec. 1, art. 6.) They are made by the same instrument courts of record (Sec. 36, art. 6) and are given 'jurisdiction to transact all county and such other business as may be prescribed by law.' Agreeably to those constitutional provisions the statutes make them courts of record. (R. S. 1909, sec. 3845.) Their sittings must be public and every person may freely attend. (R. S. 1909, sec. 3862; Constitution, sec. 10, art. 2.) They are given power to audit, adjust and settle all accounts to which the county shall be a party; to pay out of the county treasury any sum of money found to be due by the county on such accounts; to issue process to secure the attendance of person, whether a party or a witness, when deemed necessary in the examination of accounts; to compel attendance by attachment; to examine parties and witnesses under oath in the investigation of accounts; and to commit to jail for contempt for refusal to answer any lawful question. (R. S. 1909, sec. 3781.) In addition to the section just quoted, as a court of record they may punish for contempt under other provisions of the statute. (R. S. 1909, sec. 3881.) When an appeal is proper from their 'judgments and orders' the circuit court is given appellate jurisdiction. (R. S. 1909, secs. 3956, 4091.) An appeal lies from the rejection of a claim in the county court. (R. S. 1909, sec. 4096.)

"In addition to enumerated provisions showing the intimate relation between their judicial and ministerial authority, an intermingling of the two with a line of demarkation so vaguely drawn that the edges of the two authorities often overlap, there are many statutes giving them strictly judicial powers in particular instances.

"The premises considered it becomes apparent that, although we have held that in the matter of allowing claims against the county they act in a public ministerial, administrative, or auditing capacity, yet in their performance of ministerial duties in allowing claims their acts partake of the nature of judicial acts and are so related thereto in color and substance that they may be deemed not inaptly quasi judicial. On that account they are protected from personal liability except in the inflamed case of fraud, corruption or malice. It must be obvious that were the law otherwise it would be impossible to get suitable persons to perform the many and important public duties assigned, under our system, to county courts. He would be a bold man who would put his personal fortune to the hazard of mistakes in deciding the nice and complicated questions put up to that body.

"The question, one of public concern, in some of its phases, is by no means new. Pike v. Megoun, 44 Mo. l. c. 496 et seq., followed Reed v. Conway, 20 Mo. 22, in holding to the general doctrine announced above. In the Pike case it was ruled:

"'When duties which are purely ministerial are cast upon officers whose chief functions are judicial, and the ministerial duty is violated, the officer, although for most purposes a judge, is still civilly responsible for such misconduct. (Wilson v. The Mayor, 1 Den. 599; Rochester White Lead Co. v. City of Rochester, 3 Comst. 463.) And the same rule obtains where

judicial functions are cast upon a ministerial officer. But to render a judge acting in a ministerial capacity, or a ministerial officer acting in a capacity in its nature judicial, liable, it must be shown that his decisions were not merely erroneous, but that he acted from a spirit of wilifulness, corruption, and malice; in other words, that his action was knowingly wrongful, and not according to his honest convictions in respect to his duty.'

"The Reed-Conway case, supra, quoted with approval from Jenkins v. Waldron, 11 Johns. Rep. l. c. 121. In that case inspectors of election were sued for denying a voter the right to vote. In denying recovery the eminent bench, presided over by no less an authority in the law than Kent, closed its judgment with these words:

"'It would, in our opinion, be opposed to all the principles of law, justice and sound policy, to hold that officers called upon to exercise their deliberative judgments, are answerable for a mistake in law, either civilly or criminally, when their motives are pure, and untainted with fraud or malice.'

"To the same effect is Schoettgen v. Wilson, 48 Mo. 253.

"These defendants were acting within the scope of their express statutory authority in allowing or disallowing claims. They were not guilty of arbitrarily, wantonly, oppressively or fraudulently conducting themselves and, under such circumstances, they are not personally liable for acting in accordance with their honest convictions of duty. (McCutcheon v. Windsor, 55 Mo. l. c. 153.) The reasoning of Washington County v. Boyd, 64 Mo. 179, sustains the judgment below; and so does that of Edwards v. Ferguson, 73 Mo. 686, and Knox County v. Hunolt, 110 Mo. l. c. 75, and Albers v.

> Merchants' Exchange, 138 Mo. l. c. 164, and Williams v. Elliott, 76 Mo. App. l. c. 12 (a case on its facts nearly in point), and so Schooler v. Arrington, 106 Mo. App. 607."

In the case of Williams v. Elliott, 76 Mo. App. 8, it is held that a public officer clothed with discretionary ministerial powers is not liable for an error of judgment unless guilty of malice, corruption or wilful violation of law, and that the judges of the County Court of Jasper County are not personally liable for the rescission of an order accepting a bid and awarding a contract and the refusal to approve a collateral indemnifying bond.

Likewise in the case of City of St. Joseph v. McCabe, 58 Mo. App. 542, a suit was instituted against the city engineer of St. Joseph and his bondsmen to recover the amount lost on certain tax bills purchased by the plaintiff and which were illegally issued and certified by said McCabe as such city engineer. The court declined to permit recovery and said, l. c. 549:

> "It was the duty of the city engineer to pass judgment on the work of paving the street, and determine whether or not the contract had been substantially complied with. While, then, he is a ministerial officer he is vested with quasi judicial functions. In such a case the rule is, 'that a ministerial officer, acting in a matter before him with discretionary power, or acting in a matter before him judicially, or as a quasi judge, is not responsible to any one receiving an injury from such act, unless the officer act maliciously and willfully wrong.' Reed v. Conway, 20 Mo. 22 at p. 434, and numerous cases there reviewed. Edwards v. Ferguson, 73 Mo. 686. 'To render a ministerial officer acting in a capacity in its nature judicial, liable, it must be shown that his decisions were not merely erroneous, but that he acted from a spirit of willfulness, corruption and malice; in other words, that his action was knowingly wrongful, and not according to his honest convictions in respect of his duty.' Pike v. McGown, 44 Mo. 496, 497."

In view of the above decisions of the courts of this state, it appears that where the officer in question is invested with some discretion and is not circumscribed and limited by a positive statute, he may exercise that discretion, and if so exercised in good faith, he is not liable personally, although he may erroneously or illegally perform the given act.

Your inquiry does not state whether there is any fraudulent effort or act on the part of the court. If their act is the result of their fraudulent design, then, of course, they would be personally liable, but if in good faith and in the performance of their official duties as they reasonably see such duties, they authorize the payment of public funds of the county, and there is no law justifying such payment, they are not under the above holdings personally liable.

The next question is to classify the given acts under consideration. It is a matter of common knowledge that in these distressing times, more particularly and in abundance the Biblical statement is true that "the poor we have with us always". The President of the United States has issued from the highest executive authority in the Nation a proclamation that a national emergency exists. A great deal of public effort has been exerted by not only the executive but by the legislative department of our Nation in the Herculean attempt to save poor people from suffering privation in their old age. Likewise has such effort been made by the State in its executive and legislative bodies. Relief measures have been passed and the public funds are being administered in assistance to the poor. The Old Age Assistance Act passed by the Federal Government is a part of this general plan and effort. Likewise the State of Missouri has passed an Act in conformity and in conjunction with the same Act and efforts as the National Act. The depressing and unfortunate condition which prompted this national and state legislation and executive effort exists nationally and state-wide because it exists in the county in question and in every other county. These facts are piteously brought home to the members of the county court. They hear the voice of hunger every time they convene.

It does not require a stretch of the imagination to get the viewpoint of the members of the county court that by helping the County Old Age Assistance Board in getting the machinery of that branch of relief working smoothly and efficiently, they were doing a just and proper thing for the welfare of the people of their county, and if the members of the county court who honestly believed they had a right, though absent the legal right, to rescind a contract are under

no personal liability therefor, and if the county court who honestly believed they had a right to pay out $300.00 to the county highway engineer, when they did not have that legal right, were under no personal liability therefor, it would appear that the members of your county court, honestly believing that they had the right to pay out the funds you inquire about to the County Old Age Assistance Board, should not be under the personal liability to reimburse the county for the same.

The above is said bearing in mind the provisions of the County Budget Law and conditioned on compliance by the court with the provisions thereof, i. e., the money that has been so paid out as set forth in your third inquiry shall not result in or contribute to violation of the Budget Law requirement (Laws of Missouri, 1933, pp. 340, et seq.) that the priorities therein set forth "shall be sacredly preserved", which means (1) that the insane pauper patients in state hospitals shall have a sufficient sum set aside so they may be cared for; (2) similar provisions shall have been made for Classes two, three and four. In this connection it will be noted that the Budget Act does not in terms, nor, as we see it, by implication repeal Section 12954, R. S. Mo. 1929, authorizing the county court to exercise its "discretion and grant relief to all persons, without regard to residence, who may require its assistance." The provision, page 346, of the Budget Law is as follows:

> "Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

If such acts do violate the provisions of the County Budget Law, then not only the members of the county court, but also the county clerk, county treasurer, or any officer participating in the issuance or payment of such warrant is personally liable and also liable therefor on his bond for so participating in such illegal payment.

CONCLUSION

It is our opinion that the members of the county court are under no personal liability on account of having paid out without justification in law county money to members of the County Old Age Assistance Board if the members of such court so paying such money out acted in good faith and under the belief, though mistaken, that they had the legal right to so pay out such money.

If in a suit filed testing the authority of the county court to so pay out such money and seeking to recover personally from the members thereof, the evidence showed that the county court had not acted in good faith, but had fraudulently connived to violate the law, knowing at the time that they were so doing, then the members of the county court would be personally liable to reimburse the county for the funds so illegally paid out.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

DW:HR