

COUNTY COURT: (1) County court only can purchase chemicals for use of courthouse and county farm; (2) County court cannot donate cash for repair on city streets; and, (3) County court should deduct five per cent Victory Tax from warrant drawn on county treasurer.

January 26, 1943

Honorable Charles A. Prather  
Presiding Judge  
Scotland County Court  
Memphis, Missouri

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Dear Sir:

Your request for an official opinion from this office, dated January 16, 1943, has been received.

Your first question is whether or not the janitor can, without an order of record by the county court, purchase, for the county, chemical supplies to be used for the courthouse and also the county farm.

Your second question is whether or not the county court can set aside an amount of money for the repair of city streets in the city of Memphis, which is the county seat of Scotland County, and also maintain all bridges in that city.

In your third question you inquire in what manner you shall handle the five per cent Victory Tax which applies to county officers, as well as other employees to whom salaries or wages are paid.

I

In answer to your first question as to the purchase of supplies by the janitor for the courthouse and county farm, we submit the following:

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Article VI, Section 36 of the Constitution of Missouri, reads as follows:

"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. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

By reason of this section of the Constitution, the legislature enacted Section 2480 R. S. Missouri, 1939, which reads as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

The above section specifically states " \* \* \* shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; \* \* \*."

In the last Federal decennial census, the population of Scotland County was 8557.

Under the County Budget Law, Article 2, Chapter 73, Revised Statutes of Missouri, 1939, counties having a population of over fifty thousand may provide for purchasing agents to purchase supplies, but that part of the Budget Law, mentioned above, and particularly Sections 10910 to 10917, both inclusive, of said Article, does not specify as to any particular person purchasing supplies, so we must revert therefore, to the general law.

It is true that there are decisions holding that certain officers could purchase necessary supplies. It was so held in *Ewing v. Vernon County*, 216 Mo. 681; *Harkreader v. Vernon County*, 216 Mo. 696, and *Motley v. Pike County*, 233 Mo. 42.

The three above cases were decided before the enactment of the County Budget Act.

Section 10912, of the County Budget Law, R. S. Mo. 1939, reads as follows:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year and the section or sections of law under which he claims his office is entitled to the amount requested,

also he shall submit an itemized statement of the supplies he will require for his office, separating those which are payable under class 4 and class 6. Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary revenue. No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished. The clerk of the county court shall prepare and file an estimate for his office; also for the expense of the judges of the county court. If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4." (Under-scoring).

Under this section it is specifically provided as follows:

" \* \* No officer shall receive any salary or allowance for supplies until all the information required

by this section shall have been  
furnished. \* \* \* \* \*

Section 10912, supra, refers to officers, and, under the County Budget Law, as above set out, unless the officer furnished the estimates of needs as therein set out, he would not be entitled to any payment for supplies he furnishes or purchases for his particular office.

Under the facts in your request the janitor, who was not an officer, but is merely an employee of the county court, made the purchase of the chemicals in question, and it goes without saying that such a purchase would be invalid, unless the county court ordered the janitor to make the purchase and such order is of record.

County courts, being courts of record, must show their acts by records. (Maupin v. Franklin County, 67 Mo. 327; Johnson County v. Wood, 84 Mo. 489, and Milan v. Pemberton, 12 Mo. 598.)

That the order of the court for the purchase of supplies must be of record was also held in the case of Carter-Waters Corporation v. Buchanan County, 129 S. W. (2d) 914, where the court said:

"This is an action, in ten counts, for the reasonable value of road materials shipped to defendant 'at the special instance and request' of its highway engineer, alleged to have been made with the approval of two judges of the county court. Upon trial before the court without a jury, there was a general finding

and judgment for defendant.  
Plaintiff has appealed.

"\* \* \* \* \*  
Here, instead of the evidence  
making a conclusive case for re-  
covery, it wholly fails to show  
any cause of action against the  
county because it appears that  
there was no order of the county  
court made of record authorizing  
the purchase; \* \* \* \* \*."

CONCLUSION

It is, therefore, the opinion of this department,  
that Scotland County is not liable for the purchase  
of chemical supplies by a janitor, unless the county  
court, by order of record, authorized the purchase.

It is further the opinion of this department,  
that Scotland County is not liable under the contract  
of purchase, even if made by the court itself, unless  
the purchase is of record.

II

In answer to your second question, as to whether  
or not the county court of Scotland County can turn over  
cash to the city of Memphis, which is to be used for re-  
pairs on the streets of that city, and for the maintenance  
of bridges in the city, we submit the following:

Section 46, Article IV of the Constitution of Missouri, reads as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Section 47, Article IV of the Constitution of Missouri, reads as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: \* \* \* \* \*"

In answering your question in regard to bridges, we are assuming that the bridges are city bridges and not county bridges.

The Supreme Court of this State, in construing Section 46, Article IV of the Constitution, supra, in the case of State ex rel v. Court, 142 Mo. 575, held that

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an act authorizing a county revenue to be used in the repair of streets of incorporated cities, would be void.

CONCLUSION

It is, therefore, the opinion of this department, that the county court of Scotland County cannot deliver to the city of Memphis cash for the use of the city in the repair of the streets, or for the maintenance of all the city bridges.

III

Your third question is in regard to the procedure of handling the five per cent Victory Tax, which applies to county officers and other employees of the county.

Section 467, Title 26, of the Internal Revenue Code, as set out in U. S. C. A., reads as follows:

"(a) Collection of tax. The tax required to be withheld by section 466 shall be collected by the person having control of the payment of such wages by deducting such amount from such wages as and when paid. As used in this subsection, the term 'person' includes officers and employees of the United States, or of a State, Territory, or any political subdivision thereof, or of the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.



"(b) Indemnification of withholding agent. Every person required to withhold and collect any tax under this part shall be liable for the payment of such tax, and shall not be liable to any person for the amount of any such payment.

"(c) Adjustments. If more or less than the correct amount of tax is withheld or paid for any quarter in any calendar year, proper adjustments, with respect both to the tax withheld or the tax paid, may be made in any subsequent quarter of such calendar year, without interest, in such manner and at such times as may be prescribed by regulations made by the Commissioner, with the approval of the Secretary."

Under that section it is specifically stated:

" \* \* by the person having control of the payment of such wages \* \* ."

The control of wages in the county is in the county court which draws the warrant for the employee, or officer, upon the county treasurer.

Under Section 468 of the same Act the withholding officer shall make a return and pay the tax withheld, on or before the last day of the month following the close of each quarter of each calendar year.

Under the procedure used in the State, under this Internal Revenue Act, known as the "Victory Tax," the state auditor withholds the amount due the government and makes the balance payable to the employee, or officer. The government is paid by check for the five per

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Victory Tax drawn on the state treasurer.

We therefore suggest that the county court should break down the check or warrant to the employee, or officer, and, after deducting the five per cent Victory Tax, which is payable to the government, draw a separate warrant in favor of the employee for the balance to be drawn on the county treasurer.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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