

CIRCUIT COURTS:
COUNTY COURTS:

County, through the sheriff and county court, is under a duty to furnish to the Circuit Court Judge, upon his order, the facilities necessary for the holding of court and the administration of the court held in such county.

September 15, 1949

Filed: #75

Hon. John M. Rice
Prosecuting Attorney
Newton County
Neosho, Missouri



Dear Mr. Rice:

We have received your request for an opinion of this department. Your opinion request is as follows:

"In this judicial circuit, the 24th, when Judge Johnson took office in February he was not provided with office space, equipment, postage, etc. At that time the court house was filled and the county court had no space available. Judge Johnson secured office space outside the courthouse here in Neosho and, after presenting the problem to the members of the county court in each of the four counties of the judicial district, filed a statement with each county court for his expenses for the months of February, March, April and May, 1949. That statement covered office rent, telephone, electricity, postage, stationery and supplies-incident to carrying out his duties as circuit judge. The total expense was divided among the four counties in proportion to population, on the same rates as the court reporters expenses are divided.

"Is Newton County, through the County Court, or other officials, under a duty to furnish to the circuit judge, who resides at the county seat, office space in the court house and to furnish electricity, telephone, postage, stationery and office supplies? If so, and if space for such office is not available in the court house, is the county obligated to reimburse the circuit judge for this county's proportionate share of his expenditures for said items?"

Your request necessitates the answering of the following questions:

- 1) Is a county wherein the court is held under a duty to furnish the circuit court judge office space and office supplies?
- 2) If such space and supplies are not available in the courthouse and are not furnished by the county at some location outside the courthouse, is the county then under a duty to reimburse the said judge for the expenditures made by him in this regard?

There is no applicable statute that completely answers the questions herein involved, nor are there any cases directly in point. However, there are a few cases in which the same questions have arisen in respect to county officers. In these cases it has been decided that the county must provide such official with adequate office space and equipment.

In the case of *Ewing v. Vernon County*, 216 Mo. 681, 1.c. 692, the court said:

"* * * * There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; * * * * *"

Another case dealing with precisely the same circumstances is *Buchanan v. County of Ralls*, 283 Mo. 10, 1.c. 17, wherein the court gave its opinion as follows:

"* * * * if the appellant failed to provide for the use of respondent reasonably suitable space in the courthouse or elsewhere in the county seat in which to maintain her office and transact her official business, then respondent had the right to provide such office, and to provide heat, light and janitor service therefor, and that the county is bound to pay the reasonable cost of the same."

There are no statutes in this state which specifically enumerate the facilities which are deemed to be necessary for the proper conduct of the business of the circuit court, however there are two statutes which make provision for the furnishing of the necessary facilities to the court and the manner in which the

same are to be furnished.

Section 2034 Mo. R.S.A., 1939, provides:

"The several sheriffs shall attend each court held in their counties, when so directed by the court; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

The above quoted statute makes it the duty of the sheriff attending the court to furnish to the said court stationery, fuel and other things necessary for the use of the court whenever ordered by the court. The words "whenever ordered by the court" can be construed to have only one interpretation, namely, that the court shall decide what is necessary for the proper conduct of its business and the court will then order the sheriff to provide the same to it.

Section 2035 Mo. R.S.A., 1939, which provides for the auditing and certification for payment of such accounts by the court is as follows:

"The court shall audit and adjust the accounts of the officer attending it, made pursuant to this chapter, and certify the same for payment."

An early revision of Section 2035, Mo. R.S.A., 1939, which is the same in substance as the present statute, was construed in the case of State of Mo. ex rel. W. B. Hensick v. A. J. Smith, Auditor, 5 Mo. App. 427, page 429, as making the court's allowance of the account final. In this case the court said:

"* * * * The general law directs (Wag. Stat. 431, sec. 4) that all accounts for expenditures accruing in courts shall be paid out of the treasury of the county in which the court is held, in the same manner as other demands, and (Wag. Stat. 424, secs. 41, 42) shall be audited and adjusted by the court in which the services were rendered. That tribunal has the means of determining the correctness of the account, as to which the auditor can know nothing; and to that tribunal alone have

the people delegated the power of determining what expenditures are necessary to carry on, with efficiency and decorum, the public business of the court. * * * * * To hold otherwise would be to say that the people have committed to the auditor the power of suspending the session of any court in the city at his pleasure, which is manifestly absurd * * * * *"
(Underscoring ours.)

And again in the case of State ex rel. McNeil v. St. Louis County Court, 42 Mo. 496, wherein the court expressed itself as follows (l.c. 500):

"* * * * * The general law directs all such accounts to be audited, adjusted, and certified for payment by the court in which the services are rendered and the articles furnished. Such tribunal is presumed to have the means of determining almost with positive certainty as to the correctness of the items of such an account. What necessity can be shown for requiring a claim thus audited and allowed to undergo an examination by the auditor? It will not be pretended that a claim for similar services in the County Court itself would have to pass through the hands of the same officer before the County Court would be authorized to order a warrant for its payment."

From the foregoing quoted statutes and cases it follows that it is for the court alone to determine what things are necessary for its use and then to order the sheriff to furnish the same to the said court and after such things are furnished the court shall audit and adjust the account, then certify the same for payment.

Provision for the ultimate payment of the aforementioned accounts is made by Section 2102, Mo. R.S.A., 1939, as follows:

"All expenditures accruing in the circuit courts, county courts and probate courts shall be paid out of the treasury of the county in which the court is held, in the same manner as other demands."
(Underscoring ours.)

Therefore, as the above statute requires that all expenditures accruing in the circuit courts, county courts, magistrate courts

and probate courts, except salaries and clerk hire, be paid out of the treasury of the county in which the court is held, in the same manner as other demands, it is apparent that all expenditures made by the circuit court in the carrying on of its duties and business as a circuit court must be borne by the county wherein the court is held.

The fact that the judge in the instant case has not complied with all the preliminary requirements before taking it upon himself to furnish the electricity, telephone, postage, stationery, office supplies and office space to the court would not give rise to an estoppel against the said judge. This particular question was ruled upon in Buchanan v. County of Ralls, 283 Mo. 10, l.c. 17, wherein the court held the same to be a question of fact, saying:

"The evidence as shown by the record before us does not, in our opinion, justify an instruction on the theory of estoppel, nor upon the necessity of a demand by respondent upon appellant that it should supply her with a suitable office, before she was justified in renting an office elsewhere. It seems that all parties were familiar with the situation. No. one was misled. * * * * *"

It will be noticed that the above authorities and text specifically point out that each individual county wherein the court is held is under a duty to furnish to the court the facilities necessary for the transaction of the business of the court. Hence, it follows that inasmuch as the office space herein involved is located in Newton County, and said office space is necessary for the transaction of the business of the court, in Newton County, that said Newton County is under a duty to pay the entire rent of said office space as well as paying any and all other expenditures which were made and were necessary for the transaction of the business of the court in said Newton County. The other counties herein involved would be under a duty to pay all expenditures made and necessary for the transaction of the business of the court in the respective counties. It would seem unreasonable to expect the judge to keep exact account of such items as stationery used for the transaction of business in the different counties. Expense for such items might reasonably be divided among the four counties.

Hon. John M. Rice

-6-

CONCLUSION

It is therefore the opinion of this department that Newton county is under a duty to provide the Circuit Court with the necessary facilities to enable the said court to conduct its business as a court in such county, and failing in this respect the county shall pay upon the order of the court all such expenses as are necessary for the holding of court and the administration of the court in such county, which in the instant case would include the entire rent of said office space as well as all other expenditures which were made and were necessary for the transacting of the business of the court in said Newton County.

Respectfully submitted,

PHILIP M. SESTRIC
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

PMS:A