

COUNTY COURTS: Marion County Court can only hold sessions in the county seat of Palmyra.

March 8, 1939

Mr. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Mr. Stillwell:

This will acknowledge your request for an opinion under date of March 2nd, which reads as follows:

"The County Court of Marion County has always held it's sessions in the Circuit Court building in the city of Palmyra; Palmyra, of course, being the county seat of Marion County. The County Court are desirous of knowing if they can legally hold meetings for the convenience of tax payers and those having business with the Court in the Court House at Hannibal. Also, is it permissible for the County Court to meet at other designated places in Marion County other than at the Court House in Palmyra? This latter would be occasioned by the periodical necessity of inspecting roads throughout the County proper."

Section 2083, R. S. Mo. 1929, reads as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in Feb-

ruary, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient: Provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

The proviso in this section contains the following: "75,000 or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat." This proviso would not apply to the County of Marion for the reason that under the last decennial census of 1930, the population of Marion County was only 33,493. It also would not apply to Marion County for the reason that at the time of the enactment of the section, nor at this time the Legislature by an enactment had not passed a law which entitled the County of Marion to have more than one county seat.

Under Section 2083, supra, the county court can only hold sessions during the terms mentioned therein and at the place of the county seat. Any sessions outside of the terms mentioned therein or sessions at any other place would invalidate any of the proceedings of the county court. This was so held in the case of State of Missouri vs. Eubanks 166 Mo. App. 681, l.c. 682, 683, 684 and 685, where the court said:

"Huntsville is the county seat of Randolph county. In 1885, the Legislature provided for holding four terms of the county court at Moberly, with like power and jurisdiction coextensive

with said county, as pertains to similar courts of record in the state; and establishing a county clerk's office at Moberly, with a deputy clerk to be in charge of such office. * * * * *

and all business begun in said county court, at Moberly, shall be proceeded with to final determination therein, unless removed out of said court according to law; but the parties to any matter or cause of action pending in said county court, at Moberly, may, by agreement in writing, signed by the parties or their attorneys, and filed in said court, remove the same into the county court at Huntsville in said county, and parties to any matter or cause of action pending in the county court at the city of Huntsville, in said county, may, in like manner, remove the same into the county court at Moberly in said county, and said matter or cause of action, when so removed, shall be proceeded in as if it had originated in said court into which it is so removed; and in every such case the clerk of the county court may transfer the original papers on file in said matter or cause, with a certified copy of the record of entries in the same, into said court into which said matter or cause of action has been so removed, and the record in said cause shall show such removal and transfer.

* * * * * While the act of the Legislature provided for four terms of the county court to be held at Moberly, having concurrent jurisdiction with the county court established at Huntsville, the county seat, in all matters pertaining to the jurisdiction of county courts, it made two separate courts, so that proceedings instituted in one court gave that court jurisdiction to the exclusion of the other. In short, there were two

separate county courts established in Randolph county, having concurrent jurisdiction. That is to say, the judges of the county court were required, in addition to holding court at Huntsville, to hold four terms at Moberly. Whereas, the two courts, having concurrent jurisdiction over certain matters, were nevertheless separate and distinct courts, located at different places, with distinct offices for the keeping of records.

Section 6 of the act establishing the courts provides that all business begun in either of said courts shall be proceeded with to a final determination, unless removed out of said court 'according to law.' What was meant by removal according to law? The act nowhere explains, and we know of no general law providing for the removal of business from one county court to another in the same county. * * * * *

Besides, the people have the right to know when and where the public business is to be transacted, and they could not know that such business, begun today at Moberly, would be resumed tomorrow at Huntsville if the change be made by hand, and not by entry of record."

Under the above case, the court held that even though the Legislature had provided for the county court to hold its sessions at Moberly and at the city of Huntsville in the enactment, providing for the two county seats, it provided that any matter begun in either of the county courts should be consummated in that county court and not be removed to the other county court for consummation. The enactment providing for the county court to be held in the city of Moberly and city of Huntsville was enacted by the Legislature in 1885. At that time and as at the present time, the city of Moberly is the real county seat, but the law provided for the county court to meet in Huntsville, providing any matter be-

gun in Huntsville should be consummated in Huntsville and the same at the county court in Moberly. Under the holding, in this case, any act of the county court of Marion County must be begun and passed upon while in session at the county seat in Marion County.

Section 2, Article IX, Constitution of Missouri, reads as follows:

"The General Assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by general law; and no county seat shall be removed unless two-thirds of the qualified voters of the county, voting on the proposition at a general election, vote therefor; and no such proposition shall be submitted oftener than once in five years. All additions to a town which is a county seat shall be included, considered and regarded as part of the county seat."

The prohibition in the above section does not prohibit the Legislature in providing for the holding of terms of the county court in a county at a place other than the county seat. This was so held in the case of State ex rel Hughes 104 Mo. 459, 16 S. W. 489.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the county court of Marion County can only hold its sessions in the circuit court building in the city of Palmyra, and that the county court can not legally hold meetings for the convenience of taxpayers, and those having business with the court, in the courthouse at Hannibal, or any other place except the county seat.

Mr. Walter G. Stillwell

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Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

WJB:RT