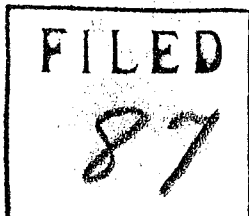


COUNTIES: Payment of warrant by county treasurer for
COUNTY COURT: services of an attorney representing in-
COUNTY TREASURER: dividual members of the county court in
contempt proceedings and habeas corpus pro-
ceedings, invalid.

SEE: State ex rel. Lack v. Melton 692 S.W.2d 302 (Mo. banc 1985).



October 13, 1954

Honorable J. O. Swink
Attorney at Law
7 North Jefferson Street
Farmington, Missouri

Dear Judge:

This will acknowledge receipt of your opinion *request* which we shall restate for sake of brevity.

You inquire if payment of the following warrant issued by the County Court of St. Francois County, Missouri, constitutes a valid expenditure of the county. Three members of said county court retained a lawyer to defend them in contempt proceedings in the circuit court of said county and also in habeas corpus proceedings filed by said members in the St. Louis Court of Appeals. Said warrant was issued in the amount of \$600 to said attorney for such services rendered and the county treasurer paid same.

In proceedings in the circuit court said members of the county court were found guilty and committed to jail, whereupon the St. Louis Court of Appeals in the habeas corpus proceedings released them. The proceeding in the St. Louis Court of Appeals is reported in the case of Pogue et al., v. Swallen, 238 S.W. (2d) 20. The contempt proceeding in the circuit court was filed for alleged failure of three members of said county court to pay additional salary of a deputy of the circuit clerk as authorized and ordered by the circuit court. The decision in Pogue, et al., v. Swallen, supra, merely held that the order of the circuit court authorizing a raise in salary of the deputy circuit clerk was valid; however, payment of same could only be enforced by proper remedy and not by contempt proceedings.

County courts are merely agents of the county and under the Constitution of the State of Missouri such courts are not longer

Honorable J. O. Swink

"Courts" in a judicial sense, but are ministerial bodies managing the counties' business, with certain taxing and administrative power. Outside of the management of fiscal affairs of the county such county courts possess no powers except those conferred by statute. State ex rel Floyd v. Philpott, 266 S.W. (2d) 704.

It is well established that a public official holds his office cum onere with all responsibilities attached thereto. State on inf. of McKittrick v. Williams, 144 S.W. (2d) 98, 346 Mo. 1003. Furthermore, the courts have held that officers are creatures of law and agents with limited authority and are trustees of public money. Lamar Twp. v. City of Lamar, 169 S.W. 12, 261 Mo. 171.

There is no statute specifically authorizing the individual members of the county court to retain counsel for the purpose of defending them under the facts stated herein at expense of the county. In this instance the St. Louis Court of Appeals held for the members of the county court, however, said opinion was premised on the improper procedure instituted therein and not on the fact that said members could ignore the orders of the circuit court authorizing said increase of salary. It further held that the order of the circuit court was valid. While under certain circumstances this may be a harsh rule to require county officers when found to be properly administering the law to incur the additional expense of retaining counsel to defend them, that is just one of the things that go with the office and in the absence of a statute authorizing such expenditure it must be paid by the county officers.

There are statutes authorizing the retention of special counsel by the county or county officials for certain specified purposes. In such instances it naturally follows that such expenditures are legitimate and the appellate courts have so held.

Section 56.250, Revised Statutes of Missouri 1949, vests in county courts of third and fourth class authority to employ special counsel in said instances and reads:

"The county courts of all counties in this state of the third and fourth classes may, in their discretion, employ special counsel or an attorney to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties, and may pay to such special counsel or attorney reasonable compensation for

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their services, such compensation to be fixed by the county court of such county, to be paid out of such funds as the county court may direct; and such counsel or attorney shall be a person learned in the law, and at least twenty-five years of age."

The foregoing statute authorizes the employment of special counsel to represent the county either in the prosecution of or defending any suit by or against the county. Under the facts stated herein we believe Section 56.250 supra, gives no authority to the members of the county court to employ special counsel in this instance, for the reason that he is not being employed to represent the county but individual members of the court.

This department long ago under date of July 8, 1938 rendered an opinion to the Prosecuting Attorney of Morgan County, Honorable G. Logan Marr, a copy of which we are attaching hereto, wherein it was held that the county court was not authorized to pay attorney fees for defending the county collector in a civil suit charging official wrong doing of the collector.

The decision in the above referred to litigation in no manner changes the liability for said counsel's fee. In other words, liability does not hinge upon whether the court sustains said officer's contention or rejects it. There just simply is no authority for paying same.

CONCLUSION

Therefore, it is the opinion of this department that the payment of said warrant was unauthorized and same may be recovered under the law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARN:vlw;sm
Enc. Opn. to Hon. G. Logan Marr
7-8-38