

COUNTY COURTS: Under Section 13713, R. S. Mo. 1939, must repair county buildings out of insurance monies.

January 16, 1943

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Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this department, as follows:

"Some time ago a small fire in our Courthouse resulted in \$500 damage, which amount was promptly paid by the insurance company holding the policy on that building. Our County Health Unit is in a building separate and apart from the Courthouse, but nevertheless is owned by Platte County, Missouri. This building needs repair and alteration at this time, in order to provide more office space, and the County Court has asked that I write to you this request for an opinion as to whether or not this \$500 may be used for repair and alteration of our County Health Unit. The question is--- may this money be used on another county-owned building, or must its use be confined to the Courthouse?"

It will be unnecessary to restate your question because it is stated in your request for an opinion.

The county court is of statutory origin and derives its power to act for the county from the statutes. State ex rel. Sanks v. Johnson, 138 Mo. App. 306.

Section 2480, R. S. Mo. 1939, under the topic, "County Courts," provides 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."

It will be noted from this section that the county court has the control and management of the property, real and personal, belonging to the county.

Section 13730, R. S. Mo. 1939, provides as follows:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

This section specifically authorizes the county court to alter, repair, and build any county buildings and has been recognized and interpreted by the courts of this state as giving exclusive jurisdiction to the county courts to repair the county buildings. In the early case of Vitt v. Owens, 42 Mo. 512, the court stated that the county court has exclusive jurisdiction over the subject of repairs of county buildings.

Also, in the case of State ex rel. Bollinger, 219 Mo. 204, l. c. 223, the court said:

"Section 6736, Revised Statutes 1899, reads as follows: 'The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.'

"Clearly that section of the statute gives the county court of Stoddard county jurisdiction over the subject-matters complained of in the petition; and the pleadings, evidence and report of the referee filed herein disclose the fact that the county has sufficient money on hand with which to pay for the proposed improvements. That being true, then the county court of that county was acting within its jurisdiction, and prohibition will not lie. (State ex rel. v. Reynolds, 209 Mo. 161; State ex rel. v. Riley, 203 Mo. 175.)"

It will be observed that Section 13730, supra, is the same as Section 6736, R. S. 1899, mentioned in the above opinion of the court.

The county has the authority and power, under the foregoing statutes, to alter, repair and build the county buildings. However, it would seem that the money derived from the insurance, by reason of the loss on the courthouse, would be restricted in its disposition and use by Section 13713, R. S. Mo. 1939, which provides as follows:

"In all cases where court houses or jails are insured, and are totally or partially destroyed by fire, windstorms or cyclones, the money realized on said insurance shall not be placed in the general revenue of the county, but shall be kept separate and apart, and be placed in a fund which shall be designated and known as a building fund, and that the same shall be used in erecting or repairing said court house or jail, or furnishing buildings or premises used for court house or jail purposes."

It will be seen that this section of the statute provides that when the courthouse or jail is insured and is totally or partially destroyed by fire, windstorm or cyclone, the money realized on such insurance by reason of such loss shall not be placed in a general revenue fund, but shall be kept separate and apart, and be placed in a fund which shall be known as a building fund. Therefore, these funds could not be used for any other purposes than as by this section provided. If, and when, all the necessary repairs to the courthouse have been made, the balance, if any, remaining could legally be placed in the general revenue fund of the county.

However, since the county court has specific authority, under Section 13730, R. S. Mo. 1939, to alter, repair and build any county buildings, it could use other public funds in the general revenue fund, if available for that purpose, to repair the building which belongs to the county and is separate and apart from the courthouse, and there could be no question of its authority to do so, that is, to repair the building in question belonging to the county.

CONCLUSION

It is, therefore, our opinion that the money paid to the county by the insurance company, by reason of the fire loss, must be used to repair the courthouse and the balance,

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if any, remaining could be turned into the general revenue fund of the county.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
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