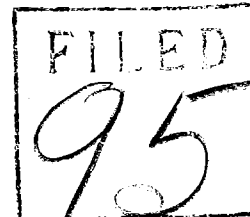


COUNTY TREASURER: Not authorized to issue check in payment of judgment until warrant was presented.

February 13, 1941



Hon. Joe Welborn
Prosecuting Attorney
Bloomfield, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 11, 1941, asking for an opinion as follows:

"Will you please favor me with an opinion on the following legal proposition:

"Can a County Treasurer in a County of a population of 33,000, pay a judgment, given in Circuit Court, without requiring the judgment holder to procure a warrant from the County Court.

"I am of the opinion that the judgment holder would at first have to obtain a warrant, in view of section 12136 R. S. Mo. 1929, which provides that the County Treasurer shall 'disburse the same (money) on warrants drawn by order of the County Court.' It is my opinion that the County Treasurer can only pay out money on warrants.

"I shall appreciate very much an opinion from your office on this matter."

The handling of county funds, and the method of payment of obligations of a county is fully provided for in the statutes. These provisions are found in Chapter 85, Revised Statutes of Missouri 1929. Section 12136 R. S. Mo. 1929, mentioned in your letter is one of them, and is as follows:

"The county treasurer shall keep his office at the county seat of the county for which he was elected, and shall attend the same during the usual business hours. The county court

shall provide said county treasurer with suitable rooms, and a secure vault in the courthouse or other building occupied by other county officers, and the county treasurer shall keep his office and records in such rooms and vault provided by the county court. He shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court."

Other pertinent sections are 12161, which requires a county clerk to keep accounts between the county and the treasurer.

Section 12162 which directs the county court to audit and settle all accounts.

Section 12169 which sets out form of demand, and form of warrant.

And Section 12163 which also prescribes the form of warrant.

Section 12170 directs when warrants shall be drawn, and is as follows:

"Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament. It shall be signed by the president of the court whilst the court is in session, attested by the clerk, and warrants shall be numbered progressively throughout each year: Provided, that where the claim allowed is for more than twenty-five dollars, the claimant may, on his own motion, in open court, have as many warrants issued for separate parts of such claim as he may desire, the whole amount of said warrants not to exceed the amount of the claim allowed, upon his paying the costs of the additional warrants."

Hon. Joe Welborn.

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And Section 12195 which provides when the treasurer may issue checks. This section is as follows:

"It shall be the duty of the county treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depositary belonging to the fund upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon a county depositary in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but no county treasurer shall draw any check upon the funds in any depositary unless there is sufficient money belonging to said fund upon which said warrant is drawn to pay the same, and no money belonging to said county shall be paid by any depositary except upon checks of the county treasurer. In case any bonds, coupons or other indebtedness of said county are payable by the terms of the bonds, coupons or other debts at any particular place other than the treasury of the county, nothing herein contained shall prevent any county court from causing the treasurer to place a sufficient sum at the place where said debts shall be payable, at the time of their maturity, to meet the same."

At no place in the above sections of the law is found any authority for a treasurer to issue checks for the payment of obligations of the county without first having a warrant properly drawn.

In the recent case of Security State Bank v. Dent County 137 S. W. (2d) 960, it is held that mandamus is the proper method to collect a judgment from a county.

CONCLUSION.

The conclusion is obvious that a county treasurer has no authority to issue a check in payment of a judgment procured against a county without having presented to him a properly prepared warrant.

Respectfully submitted,

APPROVED:

W. O. JACKSON

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COVELL R. HEWITT
(Acting Attorney General
WOJ/me