

COUNTY COURTS: Use of seal

*Supplement to
Opinion No. 10 dated
8/26/46*

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October 24, 1946

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Honorable Gordon R. Boyer
Prosecuting Attorney
Lamar, Missouri

Dear Mr. Boyer:

Since rendering to you the opinion under date of August 26, 1946, on the question of whether or not the county court is required to have a seal, since under the Constitution and Senate Bill 229 of the 63rd General Assembly it is no longer considered as a court of record, it has been called to the attention of this department that there are a number of statutes which require the seal of the county court to be attached to documents, and for that reason the county court should continue to have a seal. Therefore, General Taylor has decided to re-consider the aforesaid opinion in the light of these suggestions.

Some of the statutes in which a seal is required, and which stand unrepealed, are as follows:

Section 8 of Senate Bill 483, enacted by the 63rd General Assembly and approved July 12, 1946, requires the clerk of the county court to give a bond, one of the conditions of which is that he will deliver to his successor * * * * *, seals, * * * * * belonging to his office.

Section 10 of said bill provides in part as follows:

"Every clerk of a county court shall keep an accurate record of the orders, rules, and proceedings of the county court, and shall make a complete alphabetical index thereto; issue and attest all process, when required by law, and affix the seal of his office thereto; * * *"

Section 12 of said bill provides as follows:

"The clerk of the county court shall have power and is authorized to administer oaths and affirmations in all matters and proceedings incident to the exercise of the powers and duties of his office, and incident to the powers and proceedings of the county court of which he is clerk; and shall have power and authority to administer

oaths and affirmations, and to take and certify depositions within the respective counties in all cases where oaths or affirmations are required by law to be administered. And, when required, he shall affix thereto his jurat and the seal of the county court of which he is clerk."

Section 1852 R. S. Mo. 1939 requires that bonds of certain officers, some of which may be filed in the office of the county clerk, may be sued upon when such bonds are duly certified by the seal of the officer and whose custody the bond is required by law to be kept.

Section 1854 R. S. Mo. 1939 is to the same effect and provides that bonds filed in certain offices, when duly certified and attested with the seal of the officer to whom, by law, the custody of the same is committed, shall be used in evidence.

Under the Laws of the United States on the subject of authentication of records, etc., we find this provision on page 3985 of the Revised Statutes of Missouri, 1939:

"* * * The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form, and the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

Section 13364 R. S. Mo. 1939, as amended by House Bill 743 of the 63rd General Assembly, requires that a notary public's bond, after having been recorded in the office of the county clerk, shall be filed in the office of the Secretary of State and may be sued upon. While this section does specifically provide for the seal of the county court to be attached thereto, it has been a practice that such seal be attached.

Probably there are other statutes requiring the seal of the county court on records and documents certified by the

clerk of that court; however the statutes which we have specifically referred to herein contemplate that the seal of the county court be used. These statutes have not been repealed or modified by the 63rd General Assembly.

Section 2 of the Schedule of the 1945 Constitution provides:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly.* * *"

We do not think the statutes herein before referred to which require the clerk of the county court to use the seal of the county court in attestation of records and documents under his custody, would be inconsistent with the Constitution of 1945. While Senate Bill 229 of the 63rd General Assembly eliminates "county courts" from Section 1990 R. S. Mo. 1939 which provides what courts shall be courts of record, nevertheless, this act does not go so far as to say that county courts, even though they are not courts of records, may not have a seal.

Section 1991 R. S. Mo. 1939 does provide that courts of record have a seal, but we find no statute which prohibits a court not of record from having a seal. In view of the fact that the unrepealed statute hereinbefore referred to, relating to the duties of the county clerk in using the county court seal when certifying records, have not been repealed or amended, then we think that in order to give those statutes a full meaning, the county court would still be required to keep the seal. The rule of statutory construction which would be applicable here is found in the case of Davis Construction Co., Inc., vs. State Highway Commission, 141 S.W. (2d) 214, which rule, at l. c. 221, is as follows:

"It is a well settled rule that all parts of a statute must, if possible, be reconciled and all given meaning and effect, and that a party cannot take out isolated sections and disregard other and equally important sections of the statute."

CONCLUSION

Applying the foregoing rule of statutory construction and reasoning, it is the opinion of this department that the county courts, even though they may not be courts of record under the statutes of this state, still in order for the clerk of that

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court to perform his duties under the statutes, such courts should have a seal. It is further the opinion of this department that the opinion hereinbefore referred to directed to you under date of August 26, 1946, should be and is hereby amended and modified to the extent that county courts should have and use a seal.

Respectfully submitted,

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APPROVED:

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TWB:VLM