

ADAIR COUNTY COMMISSION MINUTES

MONDAY, SEPTEMBER 15, 2014

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IN THE CIRCUIT COURT OF ADAIR COUNTY, MISSOURI **FILED**

2nd Judicial Circuit, by way of)
 The Honorable Russell E. Steele,)
 Relator,)
 vs.) Case No.)
 Adair County Commission,)
 as an entity,)
 Carson Adams, in his official capacity)
 as an Adair County Commissioner,)
 Mark Thompson, in his official capacity)
 as an Adair County Commissioner,)
 Stanley Pickens, in his official capacity)
 as an Adair County Commissioner,)
 Sandra Collop, in her official capacity)
 as Adair County Clerk, and)
 Lori Smith, in her official capacity as)
 as Adair County Treasurer.)
 Respondents.)

**SUGGESTIONS IN SUPPORT OF WRIT OF MANDAMUS
 AND WRIT OF PROHIBITION**

COMES NOW Relator, by and through counsel, and for suggestions in support of the requested relief states as follows:

The 2nd Judicial Circuit consists of Adair, Knox and Lewis County. The 2nd Circuit has one Presiding Circuit Judge with Associate Judges in each of the aforementioned counties. Russell E. Steele is the current Presiding Judge of the 2nd Circuit.

This case pertains to a dispute regarding the authority of the Presiding Judge in managing and operating the 2nd Circuit's Juvenile Office. Specifically the attempt by the Adair County Commission to exceed its legal authority by interfering with the Presiding

Judge's responsibility under the law ... in operating the 2nd Judicial Circuit generally, and more specifically the Juvenile Office of the 2nd Judicial Circuit.

As will be set forth below and reflected in the pleadings, the dispute in large part pertains to the Adair County Commission (hereinafter "County Commission") attempting to escheat and/or withhold funds that are intended for the operation of the Juvenile Office. The dispute involves not only the construction of several different statutes but also a constitutional separation of powers issue, as an entity of the executive and/or the legislative branch (the County Commission) is interfering with the operation of the judicial branch, i.e., the Circuit Court's ability to administer and manage the Juvenile Office. Said interference violates the separation of powers between the different branches of government as contemplated in the Missouri Constitution. Further, it is interfering with the administration of justice.

Both the County Clerk and Treasurer have been named as Respondents in this because of their ministerial duty in the process of making payments from the funds in question. That will be more fully developed below.

This case is similar to putting a puzzle together, as each piece is integral in appreciating and understanding the legal issues involved. Sometimes what follows may seem to be overly basic, but the undersigned believes there needs to be a foundation as to each of the issues to appreciate the extent of the County Commission's attempt to exceed its' statutory (and constitutional) authority in inhibiting the Presiding Judge's ability and duty to administer and operate the 2nd Judicial Circuit generally, and more specifically the Juvenile Office. It should be noted the interference not only involves the operation of the Juvenile Office, but a juvenile detention center which is an integral part of an efficient and effective juvenile system. The first topic addressed is the statutory authority of Circuit Courts.

CIRCUIT COURTS

Article 2, Section 1 of the Missouri Constitution is titled "Three departments of government- separation of the powers" and reads that the "powers of government shall be

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divided into three distinct departments – the legislative, the executive and the judicial". The provision goes on to read as follows:

[E]ach of which shall be confined to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments shall exercise any power properly belonging to either of the others, except in the instance in this constitution expressly directed or permitted.

Thus by constitutional design, the three separate departments [legislative, executive and judicial] have their own responsibilities, and neither is to exceed that power unless provided for within the Constitution.

Addressing more specifically the judicial branch, the Constitution sets forth the court system in Article 5, Section 1 which reads: "The judicial power of the state shall be vested in the supreme court, at court of appeals consisting of districts as prescribed by law, and circuit courts". As to the latter Article 5 Section 14 reads:

(a) The circuit court shall have original jurisdiction over all cases and matters, civil and criminal. Such courts may issue and determine original remedial writs and shall sit at times and places within the circuit as determined by the circuit court.
 (b) Procedures for the adjudication of small claims shall be as provided by law.

As noted above, going through this step by step is critical to illustrate the basis for the Relator's allegations that the County Commission is exceeding its power under the law. Under the Constitution it can be seen that there are three distinct departments, of which obviously Relator and his responsibilities pertain to the judiciary and Respondent to the executive and/or legislative, which will be dealt with further below when the issue of county government is addressed.

Addressing further the issue of courts, Section 478.070 of the Missouri Revised Statutes (and every reference will be a reference to the Missouri Revised Statutes unless noted elsewhere) reads in part "[T]he circuit court shall have original jurisdiction over all cases and matters, civil and criminal". Further specifically pertaining to a juvenile system Section 478.063 authorizes:

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In all judicial circuits of the state, except in jurisdictions that have a family court as provided in Section 487.010 to 487.190, RSMo, the circuit judges shall be vested with powers to designate by local circuit court rule and concurred by a majority of such judges, the division or divisions which shall be juvenile division or divisions and the classes of the cases that shall be assigned to each,

The issue of the court system and specifically the juvenile office will be dealt with more fully below, but basically what this section establishes is the three separate branches of government under the Missouri constitution, and further the statutory authority establishing circuit courts. Further the authority of the circuit judge or the circuit courts over all civil and criminal cases and the establishment of juvenile divisions. Chapter 211 fleshes out further the issue of juvenile courts (and the establishment of a juvenile detention center), and that will be addressed immediately below.

JUVENILE OFFICE

The juvenile office is largely addressed in Chapter 211 of the Missouri Revised Statutes. Section 211.021 defines a juvenile court as "the juvenile division or divisions of the circuit court of the county or judges while hearing juvenile cases assigned to them." As the Court knows, the juvenile system deals with individuals who are not being prosecuted in violation of law as an adult and/or issues of abuse or neglect pertaining to minor children.

Of import in this case is Section 211.351. It basically establishes the governing procedures of the juvenile court and office it would be helpful to cite particulars of that section as follows:

1. The juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county of the first and second class and the circuit judge in circuits comprised of third and fourth class counties:
 (1) May appoint a juvenile officer and other necessary personnel to serve the judicial circuit ...
 [emphasis added]

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ATTEST: Sandra Collop
 County Clerk

Stanley Pickens
 Presiding Commissioner