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November 18, 2011

*VIA E-MAIL AND
U.S. MAIL*

Kristi Stephens
President
Missouri County Treasurers' Association
P. O. Box 207
Galena, MO 65652

Re: Analysis of Authority of County Treasurers and County Commissioners to
Sign Checks

Dear Ms. Stephens:

In your role as President of the Missouri County Treasurers' Association ("MCTA"), you asked for our analysis on a legal issue involving the check-signing authority of county treasurers in relation to the authority of other county officers, especially county commissioners. This letter provides our analysis.

The short answer is that there is no single statute that defines the relative roles of the treasurer and commissioners with perfect precision. But having said that, the overall statutory structure is quite clear, in my judgment, that the commission issues warrants for payment and the treasurer is to issue the draft or check. These authorities, read together, establish the General Assembly's intent that county commissioners do not have the authority to sign checks, and that treasurers alone have that authority.

The clearest statement of this structure is Section 50.166, RSMo 2000. It reads in total:

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Clerk may fill in warrant for expenses--form, negotiable instrument.

50.166. In all cases of claims allowed against the county, and in all cases of grants, salaries, pay and expenses allowed by law, the county clerk may fill in on a form of warrant the amount due as approved by the county commission and other necessary information. The form of the warrant thus filled in by the county clerk may be transmitted to the county treasurer. The warrant may be in such form that a single instrument may serve as the warrant and the county treasurer's draft or check, and may be so designed that it is a nonnegotiable warrant when signed by the county clerk and becomes a negotiable check or draft after it has been signed by the county treasurer.

Note this statute creates two different preliminary actions: (1) the county commission approves the payment; and (2) the county clerk "may fill in" the warrant paperwork and transmit it to the county treasurer. The warrant is not a payment; that is clear from the statutory reference that the warrant "may be so designed that it is a nonnegotiable warrant when signed by the county clerk." There are two references in Section 50.166 that support the conclusion that only the treasurer can sign a negotiable instrument like a check. One says that the warrant can be designed to be "the county treasurer's draft or check." The other references a warrant "becom[ing] a negotiable check or draft after it has been signed by the county treasurer."

Reading Section 50.166 as a whole, it seems clear that the General Assembly intended three separate and distinct roles: the commission approves the payment, the clerk prepares the warrant, and the treasurer issues a negotiable instrument such as a check.

This division of responsibility and authority is supported by other authorities. Section 110.240, RSMo 2000, gives the treasurer the responsibility to "draw . . . checks." That statute gives no similar authority to "draw checks" to the county commissioner. It reads (emphasis added):

Warrants--checks.

110.240. It is the duty of the county treasurer to draw a check as county treasurer upon a county depository in favor of the legal holder thereof, and to charge the same to the fund upon which it is drawn. No county treasurer shall draw any check upon the funds in any depository

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unless there is sufficient money belonging to the fund upon which the check is drawn to pay the same, and no money belonging to the county shall be paid by any depository except upon checks of the county treasurer. In case any bonds, coupons or other indebtedness of the 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 contained in this section shall prevent any county commission from causing the treasurer to place a sufficient sum at the place where such debts shall be payable, at the time of their maturity, to meet the same.

Section 50.160, RSMo 2000, gives the county commission various powers as to claims and warrants. It reads as follows:

Powers of county commission--auditing and enforcement of claims of county--refusal to testify, penalty.

50.160. The county commission may:

- (1) Audit, adjust and settle all accounts to which the county is a party;
- (2) Order the payment out of the county treasury of any sum of money found to be due by the county on such accounts;
- (3) Enforce the collection of money due the county;
- (4) Order suit to be brought on the bond of any delinquent and require the prosecuting attorney for the county to commence and prosecute the same;
- (5) Issue all necessary process to secure the attendance of any person, whether party or witness, whom it deems necessary to examine in the investigation of any accounts;
- (6) In order to procure the exhibition or delivery to it of any accounts, books, documents or other papers, it may issue process directed to the person in whose custody or care the accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to such commission, which process shall be served by the sheriff;

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(7) Examine all parties and witnesses on oath, touching the investigation of any accounts, and if any person being served with such process shall not appear according to the command thereof, without reasonable cause, or if any person in attendance at any hearing or proceeding shall, without reasonable cause, refuse to be sworn or to be examined, or to answer a question or to produce a book or paper, or to subscribe or swear to his deposition, he shall be deemed guilty of a misdemeanor;

(8) If it finds it necessary to do so, it may employ an accountant to audit the accounts of the various county officers.

The significant point is that this statute never gives the commission the authority to issue or sign a negotiable instrument such as a check.

Another statute that reflects this principle is Section 54.140, RSMo. It reads (emphasis added):

County revenue to be kept separate; warrants, how paid out, violation, penalty.

54.140. It shall be the duty of the county treasurer to separate and divide the revenues of such county in his hands and as they come into his hands in compliance with the provision of law; and **it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the commission, on the respective funds so set apart and subdivided, and not otherwise;** and for this purpose the treasurer shall keep a separate account with the county commission of each fund which several funds shall be known and designated as provided by law; and no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the commission as aforesaid. Any county treasurer or other county officer, who shall fail or refuse to perform the duties required of him or them under the provisions of this section and chapters 136 to 154, and in the express manner provided and directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, and in addition to such punishment, his office shall become vacant.

The key language in this statute is the duty of the treasurer “to pay out the revenues . . . on warrants issued by order of the commission.”

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Reading all these statutes together, in my judgment it is clear that county treasurers have the sole authority to sign checks or other negotiable instruments. There is no statutory support that I have seen for the proposition that a county commissioner can or should sign checks, either alone or as a second signer with the treasurer.

Please let me know if you have questions. Thank you for the opportunity to advise MCTA.

Sincerely,

A handwritten signature in cursive script that reads "Lowell Pearson".

Lowell Pearson

LDP:cst