

Frank ARNOLD, County Judge of Sharp County,
Arkansas, et al v. NORTHEAST ARKANSAS
PLANNING & CONSULTING COMPANY

82-3

631 S.W.2d 610

Supreme Court of Arkansas
Opinion delivered April 19, 1982

1. **MANDAMUS — WRIT OF MANDAMUS ISSUED BY TRIAL COURT TO COUNTY JUDGE & QUORUM COURT REQUIRING PAYMENT OF JUDGMENT — FINDING OF CONTEMPT AND ORDER THAT OFFICIALS BE JAILED PROPER.** — Where the trial court found the county judge and six members of the quorum court in contempt after their refusal to take the necessary steps to pay the judgment awarded appellee after the court issued a writ of mandamus requiring them to do so, and ordered them jailed until they paid the claim, there is no reason to disturb the findings and order of the court, since the judgment, which was entered pursuant to a jury verdict, had previously been upheld by the Supreme Court, and all excuses offered by the officials are meritless.
2. **COUNTIES — CONSTITUTIONAL PROHIBITION AGAINST ISSUING WARRANT IN EXCESS OF TOTAL REVENUES FOR YEAR — FAILURE OF COUNTY TO MEET BURDEN OF SHOWING PAYMENT OF OBLIGATION WOULD HAVE VIOLATED CONSTITUTION.** — Where there was no showing that Sharp County did not have funds to pay appellee's claim in 1975, the year the debt was incurred, the county did not meet its burden of showing that payment of the obligation would have violated the tenth amendment to the Arkansas Constitution.
3. **COUNTIES — REFUSAL OF COUNTY OFFICIALS TO APPROPRIATE MONEY TO PAY DEBT — APPROPRIATION OF 100% OF MONEY FOR OTHER DEBTS, EFFECT OF.** — Where county officials had sufficient money in the treasury and knew of the debt due appellee but refused to appropriate money for payment of it, the fact that they appropriated 100% of that money for the payment of other debts is irrelevant; if funds have to be diverted from present appropriations in order to pay the judgment awarded appellee, it will have to be done.
4. **APPEAL & ERROR — FAILURE TO RAISE ISSUE ON FIRST APPEAL — LAW OF THE CASE APPLIES.** — An issue not raised in the first appeal cannot be raised thereafter, and the law of that case applies.

6 ARNOLD, JUDGE *v.* N.E. ARK. PLNG. & CNSLTG. CO. [276
Cite as 276 Ark. 5 (1982)]

Petition for Writ of Certiorari to Sharp Circuit Court;
writ denied.

Stewart K. Lambert, Deputy Pros. Atty., and *Coop & Hopper*, by: *Paul E. Hopper*, for petitioners.

William R. Hass and *H. David Blair*, for respondents.

DARRELL HICKMAN, Justice. For almost five years, Sharp County, through its elected officials, has resisted paying a \$15,000 claim by the Northeast Arkansas Planning and Consulting Company. In June of 1980, we upheld a jury verdict against the county for \$15,000. *Sharp County v. Northeast Planning & Consulting Company*, 269 Ark. 336, 602 S.W. 629 (1980). But the county still refused to pay.

The trial court issued a writ of mandamus to the county judge, Frank Arnold, and six members of the quorum court to take the necessary steps to pay the judgment. They refused, were held in contempt of court and ordered jailed until they paid the claim. We find no reason to disturb the findings and order of the trial court.

All the excuses offered by the officials are meritless. The debt has been determined valid, and Sharp County has had its day in court. The burden was on the county to show payment of the obligation would have violated the tenth amendment to the Arkansas Constitution. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977). The county did not meet their burden because there was no showing that the county did not have funds to pay the claim in 1975, the year the debt was incurred.

There is sufficient money in the county treasury to pay it now. The fact that the county has appropriated 100% of that money for other debts is irrelevant. The officials knew of the debt in question and took no steps to appropriate money for payment of it. In fact, it seems they refused to do so and that is why the trial judge ordered them to. So we do not have a case of ordering county officials to do what they cannot legally do. If funds have

to be diverted from present appropriations it will have to be done. Any problems created by that action will be the result of the officials' refusal to fulfill their responsibility in the first place — that is paying this just debt of the county.

For the first time Sharp County argues the judgment entered cannot bear interest because of Ark. Const., art. 16, § 1. That issue was not raised in *Sharp County v. Northeast Planning & Consulting Company, supra*, and the law of that case applies. The issue cannot be raised now.

We granted a temporary stay of the trial court's order pending review of this matter on what we deem to be a petition for a writ of certiorari. That stay is dissolved and the matter is remanded. The trial court is free to proceed with its previously entered order.
