

ROADS AND ) Warrants may be issued and registered up  
          ) to amount of anticipated revenue, but not  
BRIDGES   ) in excess.

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November 10, 1937

Hon. Randolph H. Weber  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri



Dear Sir:

This department is in receipt of your letter of October 23, 1937, in which you request an opinion as follows:

"I am writing you relative to warrants issued against the County Road Fund. In the event there are not sufficient funds in the County Road Fund, can a warrant legally be issued by the County Court to be presented to the County Treasurer to be protested?"

"The Section of the Missouri Statutes which is involved in this matter, is Section 7891. The point involved, is if the fund granted to Section 7891 is depleted, can the County go ahead and issue warrants on that fund and can the party who is the payee in this warrant present it to the Treasurer and have it protested and draw interest on it the same as on the regular county warrant?"

In State ex rel. Clark County v. Hackmann, 280 Mo. 686, the Supreme Court in discussing what constitutes a valid warrant said at l.c. 696:

"The county authorities know from the assessed values and the tax rates just what revenue should come in for the year. They often issue warrants

up to the very limit of the anticipated revenue, and these warrants we have held to be valid obligations of the county. This, on the theory that the warrants represent valid contracts made during the year. By valid contracts we mean contracts within the anticipated revenue of the year. Thus in *Trask v. Livingston County*, 210 Mo. l.c. 594, it is said:

'It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created, and prohibits the anticipation of the revenues of any future year.'

So also in *State ex rel. v. Johnson*, 162 Mo. l.c. 629, it is said:

'It was ruled in *Book v. Earl*, 87 Mo. 246, that 'the evident purpose of the framers of the Constitution and the people who adopted it was to abolish in the administration of county and municipal government, the credit system, and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year.' But it was at the same time said: 'Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

'It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years."

At l.c. 698 in the Hackmann case, it is said:

"this court has said (and rightfully so) that the purpose of Sections 11 and 12 of Article X of the Constitution was to place the business of the counties upon a cash basis, we did not mean that debts contracted within the anticipated revenues of the year were invalid because the collected revenues were insufficient to meet all of such debts. Nor did we mean by such expression that warrants issued for such debts were invalid because all of them could not be paid out of the revenue actually collected. Nor did we mean that each debt should be met with cash, but we did mean that during the fiscal year the cash would be available to meet the debt if the anticipated revenue was collected and rightfully disbursed. In other words, we have dealt with the matter upon the basis of a year's business, and the term 'cash basis' has been used in the sense that the anticipated revenues of the year should at least equal the contracted debts of the year.

Such has been our construction of the constitutional system, and as suggested by counsel for respondent, if the county desired to contract debts in excess of the year's revenue, resort would have to be made to the people for their consent to the creation of such debt."

In the case of *Watson v. Kerr*, 279 S.W. 692, it is held that if, at the time of the creation of an indebtedness, it is within the income which might reasonably be anticipated, or if the indebtedness is created before it becomes apparent that the total indebtedness so created will exceed the whole of the anticipated income, that said indebtedness is not invalid and that mere errors in judgment in estimating whether indebtedness can be incurred and the total expenditures still kept within the income anticipated, is not sufficient to impeach good faith of the county court, and that to so impeach county court, there must have been fraud or palpable attempt to evade Article X, Section 12 of the Constitution.

#### CONCLUSION

Therefore, it is the opinion of this department that if there is not sufficient funds in the County Road Fund, created by authority of Section 7891 of the Revised Statutes of Missouri, 1929, due to failure to collect all the anticipated revenue, to pay warrants as they are issued, that said warrants may be issued and registered with the county treasurer, if said warrant is within the amount of the anticipated revenue. If said warrant is in excess of the total amount of anticipated revenue, it may not be issued because it would be contrary to Article X, Section 12 of the Constitution of Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

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APPROVED By:

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J.E. TAYLOR  
(Acting) Attorney General