

COUNTIES: County courts may appropriate monies
FEDERAL SURPLUS for purchase of food stamps, but
COMMODITIES: such purchases must be subject to
✓ FOOD STAMP PLAN: the provisions of the County Budget
✓ COUNTY BUDGET ACT: Act.

March 26, 1941.

Honorable Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Mr. Stillwell:

This is in reply to yours of recent date wherein you submit the following questions:

"1. Is it legal for a county, through it's County Court to advance a sum of money for the purchase of food stamps in order to cooperate with the Surplus Commodities Corporation in the establishment of a food stamp plan within the county?

"2. If the above be answered in the affirmative, would it be possible for said Court to circumvent the budget of county expenditures for the calendar year 1941 by immediately making appropriation to purchase food stamps."

By the opinion which this department rendered on September 26, 1940, to Mr. Frank W. Hayes, Prosecuting Attorney of Pettis County, we think the answer to your first question will be in the affirmative. You will note, however, that the Hayes opinion concluded with the proviso that the funds which are appropriated for the purpose of purchasing the food stamps are available and the appropriation of same, will not be in conflict with the provisions of the County Budget Act.

Your second question goes to the question of whether or not the county court may circumvent the Budget Act and immediately appropriate money out of the 1941 revenues to purchase the food stamps. The County Budget Act now found at Article 2, Chapter 73, R. S. Mo. 1939, which was enacted in 1933, Laws of Missouri 1933, page 340, has been before our courts on numerous occasions and the courts have, at all times, held that the provisions of this act must be strictly adhered to and the purpose of the act was to place the counties on a cash basis.

You state in your letter that both Marion and Ralls County have ample and adequate funds to finance this food stamp plan, but you do not indicate whether or not these funds are in the classes from which the same may be drawn by authority of the County Budget Act. You may have funds now in Classes 1, 2, 3 and 4 which would be sufficient to finance this revolving fund, but under the provisions of Section 10917 R. S. Mo. 1939, the county court would not have any authority nor would any officer be authorized to pay any of these funds out, for the revolving fund, until it was determined that all of the obligations against these classes had been paid or there were sufficient funds to pay same. The last paragraph of said Section 10917 provides as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this law shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

We find another section of the statute which supports our views here, Section 11219 R. S. Mo. 1939, which is as follows:

"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 court, 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 court 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 court 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 chapter, 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 \$100, and not more than \$500, and in addition to such punishment, his office shall become vacant."

We think this section should be read with the County Budget Act, and by so doing the officer would not have any authority to pay out revenues from funds other than the class to which they belong. Funds for the food stamp plan may be paid out of Class 5 providing the same were taken into consideration when the county budget was made up by the officers. If it was not so taken into consideration then, in any event, it could be paid out of Class 6.

CONCLUSION

From the foregoing, it is the opinion of this department that county courts may not circumvent the budget of

Hon. Walter G. Stillwell

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county expenditures for the calendar year 1941 by immediately making appropriation to purchase food stamps, but if monies are available in Classes 5 or 6, under the Budget Law, then the county courts may appropriate such monies for the purpose of purchasing the food stamps.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED

VANE C. THURLO
(Acting) Attorney-General

TWB:LB