

COUNTY COURT)
BUDGET)

Class 5 of Section 10914, Laws of Missouri,
1941, page 652, construed.

February 4, 1944



Honorable J. W. Wight
Presiding Judge
Randolph County
Moberly, Missouri

Dear Judge Wight:

This is in reply to your opinion request,
which request was as follows:

"I have taken occasion to read an
opinion rendered by your Department
to the Honorable E. O. Shelton,
County Clerk of Randolph County,
Huntsville, Missouri, under date
of September 1, 1943.

"At page 6 of the opinion request,
class 5 of the Budget Act, reported
at page 652, Laws of Missouri, 1941,
is fully set out verbatim.

"I would like very much to have an
interpretation on what is meant by
the phrase "to be used as contingent
and emergency expenses" in said class."

For the purpose of this opinion we shall quote
verbatim class 5; Section 10914 of the Budget Act,
Laws of Missouri, 1941, page 652, which reads as
follows:

"Class 5. Contingent and emergency
expense. --The county court may transfer
any surplus funds from class 1, 2, 3 and
4 to class 5 to be used as contingent and
emergency expenses. Purposes, for which
the court proposes the funds in this
class shall be used, shall be shown."

In order to arrive at a comprehensive understanding of
this phrase we shall quote some of the cases contained
in "Words and Phrases", Volumes 9 and 14. Volume 9,
page 124, setting forth the definition "contingent ex-
penses" defined in part thusly:

"A contingent expense must be deemed to be an expense depending on some future uncertain event. *People v. Village of Yonkers, N.Y.*, 39 Barb. 266, 272."

"Contingent expenses necessarily incurred for use and benefit of county which are made proper county charges by virtue of Rev. Codes 1921, section 4952, subd. 8, are defined to mean happening of unforeseen causes or subject to unforeseen conditions, or such as are possible or liable but not certain to occur. *Brannin v. Sweet Grass County*, 293 P. 970, 972, 88 Mont. 412."

"'Contingent expenses' are such as are unknown and uncertain, which may or may not be incurred, and depend on some future uncertain event; and a city council, authorized by Comp. Laws 1913, section 3677, to levy taxes for 'contingent expenses' not otherwise provided for, may appropriate a definite maximum amount to compensate assistants to the city attorney pending litigation affecting the interests of the city. *Scott v. City of Jamestown*, 217 N. W. 668, 673, 56 N. D. 454."

From Volume 14, page 307, we also find the word "emergency" defined in part thusly:

"The word 'emergency' signifies some sudden or unexpected necessity, requiring immediate or at least quick action. *Mallon v. Board of Water Com'rs.* 128 S.W. 764, 765, 144 Mo. App. 104.

"An 'emergency' is an event or occasional combination of circumstances calling for immediate action, pressing necessity, a sudden or unexpected happening, exigency. *Colfax County v. Butler County*, 120 N.W. 444, 447, 83 Neb. 803; *Parker v. City of Monroe*, 55 So. 587, 589, 128 La. 951."

"The word 'emergency' is defined in Cent.Dict. as follows: '(2) A sudden or unexpected happening; an unforeseen occurrence or condition; specifically, a perplexing contingency or complication of circumstances. (3) A sudden or unexpected occasion for action; exigency; pressing necessity.' United States v. Sheridan-Kirk Contract Co., 149 F. 809, 814."

"'Emergency' in statute authorizing members of board of supervisors to make emergency expenditures is unforeseen occurrence of combination of circumstances calling for immediate action (Code 1930, section 6064). Attala County v. Mississippi Tractor & Equipment Co., 139 So. 628, 162 Miss. 564."

Thus from the foregoing definitions if we were endeavoring to fix a strict definition to this phrase, we must conclude that a future, unforeseen event must occur which gives rise to a necessity to spend money, in order to eradicate the condition which has been brought about by the event. The County Court in that event may transfer any surplus funds from classes 1, 2, 3 and 4 to class 5, to meet such exigency.

The foregoing definition is based upon a technical definition or interpretation of the phrase. However, it is our view that because of the nature of class 5, namely; a class in the Budget Act, it is our view that the wording is susceptible to a more liberal construction that would be indicated by the foregoing cases. We might further point out that class 5 in our opinion, was primarily enacted for the purpose of giving the County Court authority to meet unforeseen expenditures which were not liquid at the time that the budget was set up for any particular year, and with this thought in mind, we are driven to the conclusion that the phrase in class 5 simply means that when a contingency or emergency arises and has to do with the expenditure of money for a county purpose, then the County Court is empowered under class 5, supra, to meet such expenditure by transferring funds from class 1, 2, 3 and 4 to class 5. Of course, the reason for the expenditure and the necessity thereof will in every case, depend upon the situation and need at the particular time. In this opinion we cannot surmise with any certainty

any one of the multitude of events that may arise where the County Court would have the right under this class to expend money. But of course we assume that it was in every case for a county purpose. We shall next turn to the remaining portion of class 5.

It is our view from the further reading of class 5 that through the use of the word "may" that it is directory on the County Court as to whether they shall transfer any surplus funds, in other words the County Court is clothed with discretion in determining whether or not a contingent and emergency expense is necessary in the first instant. If the Court decided that such an event has arisen requiring the transfer of the surplus funds in classes 1, 2, 3 and 4 to class 5, then it is mandatory that "the purposes for which the Court proposes the funds in this class shall be used, shall be shown." For it will be noted that the Legislature used the word "shall" in the last sentence, and as pointed out heretofore, also used the word "may", also in the section thereby intending that both the words "may" and "shall" should be used in their ordinary legal sense. In this connection we call attention to the case of State vs. Wymore, 119 S. W. (2d) 941, 1.c. 944:

"* * *On reading the article it will be noted that the words 'may' and 'shall' are used many times in the several sections. They were used advisedly and must be given their usual and ordinary meaning. It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory.)

We might further point out that by the term "shall be shown" means that the County Court shall make an order in each particular instance setting forth the purposes for which the Court proposes the funds in this class shall be used. The order so made of course would act as a protection for the County Treasurer and would enable the citizenry of the county to take any steps that they saw fit, should they be of the opinion that Court was over-stepping its authority.

CONCLUSION

It is the opinion of this Department that the phrase "to be used as contingent and emergency expenses" as contained in class 5 of the County Budget Act, reported at

Hon. J. W. Wight

-5-

February 4, 1944

page 652, Laws of Missouri, 1941, means that when a future, unforeseen event occurs which gives rise for the necessity to spend money, in order to meet the condition which has been brought about by the event or any unliquidated obligation, which could not be ascertained and set up at the time of the making of the budget, then the County Court in that event in their discretion, may transfer any surplus funds from classes 1, 2 3 and 4 to class 5 to meet such exigency, but must do so through suitable court order, setting forth the purposes for which the court proposes the funds under this class shall be used.

Respectfully submitted,

B. Richards Creech
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

BRC:ir