

COUNTIES: Trustees operating county public hospital established under Section 205.160, RSMo 1949, authorized to  
HOSPITALS: anticipate special current tax levy for purpose of paying superintendent of hospital and county court in third and fourth class counties is required to issue warrants therefor on the county hospital fund.



October 19, 1951

10-19-51

Honorable R. M. Gifford  
Prosecuting Attorney  
Sullivan County  
Milan, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent inquiry reading as follows:

"Your opinion on the following set of circumstances would be deeply appreciated:

"Sullivan County, a county of the third class voted in favor of the construction of a county hospital several months ago and the county court of recent date has approved the employment of a so called administrator or manager of such hospital by the county hospital board and the question has now arisen as to how the court may pay the salary of such administrator during the balance of this year. A ten cent maintenance tax was levied by an order of the county court earlier in 1951 and such assessment is being extended at this time on the tax books by the county clerk but no provision was made in the budget for the payment of such administrator and the question has arisen as to whether it would be proper for the court to order the issuance of warrants in payment of such salary in anticipation of the revenue from the ten cent levy."

For the purpose of this opinion it is conceded that the hospital recently established in Sullivan County came into being by virtue of authority contained in Section 205.160, RSMo 1949, which provides as follows:

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"The county courts of the several counties of this state are hereby authorized, as provided in sections 205.160 to 205.340, to establish, construct, equip, improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties."

Section 205.200, RSMo 1949, as repealed and reenacted by H. B. 229, 66th General Assembly, provides as follows:

"Except in counties operating under the charter form of government, the county court in any county wherein a public hospital shall have been established as provided in sections 205.160 to 205.340, shall levy annually a rate of taxation on all property subject to its taxing powers in excess of the rates levied for other county purposes to defray the amount required for the maintenance and improvement of such public hospital, as certified to it by the board of trustees of the hospital; the tax levied for such purpose shall not be in excess of twenty cents on the one hundred dollars assessed valuation. The funds arising from the tax levied for such purpose shall be used for the purpose for which the tax was levied and none other."

The statute, just quoted, authorizing the tax levy clearly discloses that such tax is a special tax and that funds arising therefrom are to be set apart from ordinary revenue of the county and used for the purpose for which the levy was made, and for no other purpose.

It stands admitted that the special tax levy was made by the county court in the early part of 1951 and has by this time been duly extended on the tax books. The sole question to be decided here is whether the county court may issue its warrant on the anticipated revenue from such levy to pay the superintendent of such hospital without such expenditure having been budgeted in the 1951 county budget.

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Under Section 205.190, RSMo 1949, the management and control of the hospital is vested in a board of trustees and in such section we find powers vested in such trustees in the following language:

"2. The county treasurer of the county in which such hospital is located shall be treasurer of the board of trustees, and in counties which have no treasurer the county collector shall be the treasurer of the board of trustees. The treasurer shall receive and pay out all the moneys under the control of the said board, as ordered by it, but shall receive no compensation from such board.

\* \* \* \* \*

"4. \* \* \* They shall have the exclusive control of the expenditures of all moneys collected to the credit of the hospital fund, and of the purchase of site or sites, the purchase or construction of any hospital buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased, or set apart for that purpose; provided, that all moneys received for such hospital shall be deposited in the treasury of the county to the credit of the hospital fund, and paid out only upon warrants ordered drawn by the county court of said county upon the properly authenticated vouchers of the hospital board.

"5. Said board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants and fix their compensation, and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of sections 205.160 to 205.340 in establishing and maintaining a county public hospital."

The county hospital law was before the Supreme Court of Missouri in the case of State ex rel. Holman v. Trimble, 293

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S.W. 98, 316 Mo. 1041, and the powers of trustees under these statutes were alluded to in the following words as the Supreme Court was construing a previous opinion of the Kansas City Court of Appeals. The court spoke as follows at 316 Mo., l.c. 1047:

"The Court of Appeals construed these statutes to mean that hospital trustees have exclusive control of the expenditure of moneys collected to the credit of the hospital fund. The natural interpretation of that language excludes the intervention of any other official in determining what claims are to be paid and what accounts ought to be allowed. The plain words mean that full discretion is vested in the hospital board to pass upon and determine the validity of every claim presented. Relators call attention to the provision that the money must be deposited in the treasury of the county and must be paid out only upon warrants drawn by the county court, and argue that the county court is thus vested with some discretion, some function to determine whether or not the claims presented are valid, but that same sentence of the statute goes on to say that such payments are made upon properly authenticated vouchers of the hospital board. That seems to leave no doubt that the only judgment exercised by the county court is determined whether the vouchers presented show proper authentication of the hospital board, and whether they are for purposes within control of the hospital board and for the purposes of the above statute. If such vouchers should show on their faces that they were issued for purposes foreign to the field controlled by the hospital board, the county court could deny warrants. \* \* \*"

We next pass to the question of whether the board of trustees may call upon the county court to issue its warrant on the special hospital fund when such fund is merely anticipated from a current tax levy, but the actual existence thereof awaits the collection of the tax levied. By enactment of the enabling legislation providing for a county public hospital, the legislature has recognized the project as a proper governmental function;

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provision for a special tax levy over and above that permitted for general governmental purposes to defray costs of maintenance and operation of such hospital evidences the importance of such legislation; and placing responsibility for the proper and efficient management of such hospital in a board of trustees elected by the people does not take away from this project any of its characteristics as a proper governmental function. This being so, we conclude that it is within the power of the board of trustees, in furtherance of an efficient administration of such hospital, to anticipate its current revenue from a proper tax levy properly extended on the tax books for the current year, and the county court is duty-bound to honor vouchers of such trustees and issue warrants on such special funds to defray current operating costs of such hospital. No citation of authority is necessary to disclose that county courts in this state are permitted to issue warrants in anticipation of current general revenue and we see no reason why such privilege should not be extended to current anticipated revenue resulting from a special tax levy for the support and maintenance of a county public hospital.

We now turn to that portion of the opinion request which discloses a doubt relative to the applicability of the county budget law to funds derived from the special tax levy for the support and maintenance of the county public hospital. The county budget law applicable to third and fourth class counties is found in Sections 50.670 to 50.740, RSMo 1949. Section 50.670, RSMo 1949, defines the word "revenue" as follows:

"\* \* \*Whenever the term 'revenue' is used in sections 50.530 to 50.740 it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by sections 50.530 to 50.740, regardless of the source from which derived. \* \* \*"

Section 50.680, RSMo 1949, providing for classification in the budget of proposed expenditures fails to mention expenditures for maintenance and operation of a county public hospital among those which must be classified, and specifically exempts from classification and apportionment any funds for upkeep of roads in any special road district. The reason for this can best be summarized in the following language from State ex rel. Armontrout v. Smith, 182 S. W. (2d) 574, 353 Mo. 486, l.c. 492:

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"All of these acts, the Budget Act, the Purchasing Agent Act and the County Budget Act were passed at the same session in 1933. Their primary purpose was to regulate the usual operation of the regular departments of Government whose needs could be foreseen and planned on a biennial basis."

We are mindful of the following holding in State ex rel. Ginger v. Palmer, et al., 198 S.W. (2d) 10, 1.c. 11:

"The Budget Law, even before the 1941 amendment, contemplated the budgeting of all the county funds and the issuance of a warrant in excess of the revenue for any purpose constituted a violation of that law. \* \* \*"

The Palmer case can be distinguished from the facts being considered here, for in that case the court was considering income derived from the statutory county-wide tax levy for road and bridge purposes, and the county court in such instance had failed to mention such anticipated revenue in its budget. Of course, the Court in the Palmer case was justified in alluding to such funds as county funds which should have been budgeted, but such funds bear little or no resemblance to the funds provided for by the special tax levy authorized to maintain a county public hospital. Another salient fact which convinces us that funds derived from the special tax levy for maintenance of a county public hospital are not to be considered as county revenue to be budgeted, is inferred from the language found in Section 205.230, RSMo 1949, which provides as follows:

"In counties exercising the rights conferred by sections 205.160 to 205.340, the county court may appropriate each year, in addition to tax for hospital fund herein provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established."

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The above quoted statute gives county courts power to augment county public hospital funds by an appropriation from its general revenue funds, and this is tacit admission that the fund augmented is not county revenue within the meaning of the county budget act, and no requirement that it be budgeted has been found in the county budget law.

CONCLUSION

It is the opinion of this department that county courts in third and fourth class counties are required to issue warrants upon properly authenticated vouchers of the board of trustees of a county public hospital, established by authority contained in Section 205.160, RSMo 1949, so long as such warrants do not exceed the current anticipated revenue from the special tax levy as made and authorized by Section 205.200, RSMo 1949, as repealed and reenacted by H. B. 229, passed by the 66th General Assembly, and such revenue is not required to be budgeted under the county budget law found at sections 50.670 to 50.740, RSMo 1949.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

  
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