

THIRD CLASS COUNTY: )  
COUNTY BUDGET LAW: )  
SURPLUSES: )

1. A county of third class, having accumulated a surplus over a period of years from the balances of funds of which the objects of their creation are fully satisfied, may use such surplus funds in the building of a county jail. Such expenditure should be specifically budgeted. 2. Use of such funds for such purpose is within the discretion of the county court, and does not require voter approval. 3. Bonds may be issued to supply any money needed in addition to such surplus fund.

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August 7, 1953

Honorable Edgar Mayfield  
Prosecuting Attorney  
Laclede County  
Lebanon, Missouri

Dear Mr. Mayfield:

We render herewith our opinion based on your request of July 18, 1953, which request reads as follows:

"I would appreciate an opinion from your office regarding the following matters.

"Laclede County, a county of the third class, has an ancient building for a jail which, over the past few years, has proved to be insecure for the purposes of imprisonment. Several jail-breaks over the past few years, effected by digging through the walls of the structure, have aroused county officials and the citizens of the County, and they are now seriously interested in seeing what can be done to remedy the situation.

"I am informed that our county treasury is now enjoying a surplus of revenue funds, and certain members of the County Court have inquired as to whether these funds might be used for the purposes of constructing a new jail, or whether a bond issue will have to be voted to appropriate funds for that purpose. And, if they can use the surplus funds on hand but such surplus is insufficient

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to pay the total cost of construction, are they empowered to use the surplus for that purpose and, in addition, vote a bond issue for the remaining amount required.

"If the County Court is permitted to expend the aforesaid surplus for jail construction, is the decision to so spend this money entirely one within their discretion, or must they have voter approval?"

"I have examined the pertinent statutes in the above matters, but will appreciate having my views fortified by an official opinion from your office covering same."

We assume that the Laclede County surplus has been accumulated by leftovers at the end of fiscal years from various funds - as for instance, a certain amount has been set aside for the care of insane pauper patients in state hospitals for a given year, and a less amount actually spent - so that you are within the terms of Sections 50.020 and 50.030, RSMo 1949, and within the decision of the Decker case, hereinafter cited and discussed.

We shall take your questions in this order: 1. Can a surplus of revenue funds of a third class county be used in the construction of a county jail? 2. If so, is voter approval required or is the use of such funds in the construction of a jail in the sole discretion of the County Court? 3. If such funds may be so used, and are not sufficient for the purpose, may bonds be issued to raise the balance required?

The first question confronted the Greene County Court many years ago, and was answered in the affirmative by the Supreme Court in *Decker v. Diemer*, 229 Mo. 296, 129 S.W. 936. (While Greene County was not of the third class, the statutes upon which the court rested its opinion apply equally to counties of that class.)

The court in that case reached its decision via what are now Sections 49.310, 49.320, 50.020 and 50.030, RSMo 1949, which for convenient reference we here quote in full:

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"49.310. County court may erect and maintain courthouse, jail, etc.--issue bonds.--The county court in each county in this state shall erect and maintain at the established seat of justice a good and sufficient courthouse, jail and necessary fireproof buildings for the preservation of the records of the county. In pursuance of the authority herein delegated to the county courts, said county courts may acquire a site, construct, reconstruct, remodel, repair, maintain and equip said courthouse and jail, and in counties wherein more than one place is provided by law for holding of court, the county court may buy and equip or acquire a site and construct a building or buildings to be used as a courthouse and jail, and may remodel, repair, maintain and equip such building in said place or places. The county court may issue bonds as provided by the general law covering the issuance of bonds by counties for the purposes set forth in this section. In bond elections for the aforesaid purposes in counties wherein more than one place is provided by law for holding of court, a separate ballot question may be submitted covering proposed expenditures in each separate site described therein, or a single ballot question may be submitted covering proposed expenditures at more than one site, if the amount of said proposed expenditures at each of said sites is specifically set out therein."

"49.320. County court may order buildings erected--superintendent.--Whenever the county court of any county shall think it expedient to erect any of the buildings aforesaid, the building of which shall not be otherwise provided for, and there shall be sufficient funds in the county treasury for that purpose, not otherwise

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appropriated, or the circumstances of the county will otherwise permit, they shall make an order for the building thereof, stating in such order the amount to be appropriated for that purpose, and shall appoint some suitable person to superintend the erection of such buildings, who shall take an oath or affirmation faithfully and impartially to discharge the duties enjoined on him by sections 49.280 to 49.500."

"50.020. Transfer of county funds.--Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

"50.030. Section 50.020 construed.--Nothing in section 50.020 shall be construed to authorize any county court to transfer or consolidate any funds not otherwise provided for by law, excepting balances of funds of which the objects of their creation are and have been fully satisfied."

Over a period of years the Greene County Court had accumulated, from odds and ends left over from various current expense funds at the end of each fiscal year, a sizable surplus. The court proposed to use this accumulation in the construction of a courthouse. A suit to enjoin such use wound up in the Supreme Court of Missouri, and the court held (*Decker v. Diemer, supra*), on the basis of the above-quoted statutes, that such use was permissible. Following is a quotation from the opinion, appearing at l.c. 336, in the official report:

"The bald question then is: May a county court transfer a surplus and divert it from a fund, having a designated and given purpose, to another legitimate county

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purpose, by force and reason of the satisfaction of the original use or purpose? We answer that question in the affirmative. \* \* \* We are further of the opinion that when all warrants and debts properly chargeable to a fund in any one year are paid and provided for, the residue of such fund is a 'surplus' within the purview of the transfer sections. Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of the people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made."

This would be a sufficient answer to the first question, except that in any question of this nature one should examine the County Budget Law, Sections 50.670 to 50.740, inclusive, RSMo 1949, enacted subsequently to the decision in the Decker case. Does the County Budget Law limit the effect of the Decker decision on statutes upon which the Decker case was decided? We conclude that it does not.

This law, enacted in 1933, provides for the preparation by the county court of an annual estimate of receipts and expenditures; for classification of proposed expenditures; and for priority of certain classes of expenditures. This classification and priority shall be "sacredly preserved."

The sixth and last class to be included in the budget, provided in Section 50.170 is placed "amount available for all other expenses after all prior classes have been provided for." Also, Section 50.680 provides that, after having provided for the prior five classes of expenses, the court may expend any balance for "any lawful purpose." There can be no doubt that the building of a county jail is a "lawful purpose" within the meaning of this statute and can be budgeted in this class.

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Therefore, we do not discern in the County Budget Law any legislative intent to limit the effect of Sections 49.310, 49.320, 50.020 and 50.030, quoted above. The Budget Law does require, however, that the jail construction be specifically budgeted for the year such expenditure is anticipated.

There is this limitation upon the use of class six funds: That none can be used until all outstanding warrants are paid, and there is actually on hand in cash, funds sufficient to pay all claims in the preceding classes and all expense incurred in class six, Section 50.680. We assume that Laclede County has no outstanding warrants constituting legal obligations, and has sufficient cash on hand to pay all claims.

Having disposed of the first question, we proceed to the second: Is voter approval required for the use of surplus funds in the construction of a jail, or is this within the discretion of the county court?

Our answer is that this is within the discretion of the county court, and voter approval is not required. This we believe to be the obvious meaning of Section 49.320, quoted above, in the use of the language, "Whenever the county court of any county shall think it expedient, etc.," and, in Section 49.310, "In pursuance of the authority herein delegated to the county courts, said county courts may acquire a site \* \* \* construct \* \* \* said \* \* \* jail." Voter approval is not required, save to the issuance of bonds for the purpose. Also, see Decker v. Diemer, supra, l.c. 324, to the effect that the building of a courthouse or jail is within the discretion of the county court.

Now, to the third question: If the surplus funds are not sufficient for the construction of a jail, may bonds be issued to supply the balance? Our opinion is that they may.

Section 49.310, quoted above, provides:

" \* \* \* The county court may issue bonds as provided by the general law covering the issuance of bonds by counties for the purposes set forth in this section.  
\* \* \*"

Neither this section, nor Chapter 108, RSMo 1949, containing the "general law covering the issuance of bonds by counties,"

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indicates that all the money needed, or none at all, shall be raised by a bond issue. There is no rule or reason that bonds cannot be issued to supply a deficiency, or that they should be issued in a sufficient sum to raise the entire cost of construction and equipment when such amount is not required.

CONCLUSION

It is the opinion of this office that:

1. A county of the third class, having accumulated a surplus of over a period of years from the balances of funds of which the objects of their creation are fully satisfied, may use such surplus funds in the building of a county jail. Such expenditure should be specifically budgeted.

2. The use of such funds for such purpose is within the discretion of the county court, and does not require voter approval.

3. Bonds may be issued to supply any money needed in addition to such surplus fund.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK/fh