

COUNTY BUDGET LAW: When effective

SB 154

Sec 11 19-33

Laws 33

9/13

September 12, 1933.



Hon. C. Arthur Anderson,
Prosecuting Attorney,
St. Louis County,
Clayton, Missouri.

Dear Sir:

Attention: Hon. John J. Wolfe,
Associate Prosecuting Attorney

This department acknowledges receipt of your letter of August 4, 1933 relating to the "County Budget Law" passed by the last Legislature. Your letter reads as follows:

"At the last session of the Legislature a bill was passed providing for a County Budget in certain counties - Session Acts of 1933, page 340.

According to the provisions of this law a budget for county expenditures and a statement of income for each year must be prepared by the budget officer.

At the present time the County of St. Louis is advertising for bids on several highway projects and we are in doubt as to whether or not we will be required to comply with Section 19 of the Budget Act and be subject to the penalties of Section 20 before a budget can become effective during the month of January 1934."

From reading the County Budget Law we note that sections 9 to 20 inclusive apply to counties of more than 50,000 inhabitants; St. Louis County being much greater in population, will therefore be guided by the above mentioned sections, and we shall look to these sections in determining the questions presented in your letter.

There is no emergency clause at the close of the County Budget Law; therefore, the law became effective 90 days after the close of the session of the Legislature, same being July 24. In the sections mentioned above there appear to be no duties

which become mandatory for any official to perform before October 1, 1933. Sec. 11, Laws of Mo. 1933, p. 347, is in part as follows:

"On or before October 1 of each year, each department, office, institution, commission, or court of the county receiving its revenues in whole or in part from the county shall prepare and submit to the budget officer estimates of its requirements for expenditures and its estimated revenues for the next budget year compared with the corresponding figures for the last completed fiscal year and estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by functions and activities, if so directed by the budget officer. The estimates shall be accompanied by work programs showing the work it is planned to do and the estimated cost thereof classified according to funds, organization units, character and objects of expenditure. The estimates of revenues shall be prepared by the accounting officer and shall be classified so as to show the receipts by funds, organization units, and sources. The budget officer may direct that estimate forms be prepared and sent to such departments, offices, institutions, commissions and courts by the accounting officer and that the estimates shall be returned to the accounting officer for tabulation. If any department, office, institution, commission or court shall fail to return its estimates by October 10, the budget officer shall make the estimates and such estimates shall be considered as the estimates of such department, office, institution, commission, or court."

You state in your letter that St. Louis County is now advertising for bids on several highway projects. There being no duties devolving upon any one at the present time, we are confronted with the proposition as to whether the terms of the statute should be taken into consideration before said bids should be considered. It was stated in the case of State ex rel v. Dierks,

211 Mo. 568, as follows:

"A statutory provision, though not going into actual operation until a future time, may have a potential existence."

The projects which you mention will, no doubt, be let in the near future, and the law now being effective in executing contracts, we quote the pertinent part of Sec. 19, Laws of Mo. 1933, p. 350:

"No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating; provided, that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it shall be sufficient for the accounting officer to certify that such bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of such bonds yet to be sold or of such taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least 500 copies per issue, if there be such, except that such advertising shall not be required in case of contracts or purchases involving an expenditure of less than \$500.00, in which case notice shall be posted on the bulletin board in the court house. All bids for any contract or purchase may be rejected and new bids advertised for."

the provisions of which should be so construed so as not to defeat

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the purpose of the County Budget Law and make it impossible for the accounting officer to carry out his duties, and subject himself to the penalties as set forth in Section 20, Laws of Mo. 1933, p. 351, which is as follows:

"The accounting officer shall be personally liable and liable on his bond for the amount of any obligation incurred by his erroneous certification as to the sufficiency of an appropriation or of a cash balance, or for any warrant drawn when there is not a sufficient amount unencumbered in the appropriation or a sufficient unencumbered cash balance in the fund to pay the same, or for the payment of any amount not legally owing by the county."

Under Section 19 as quoted above, if the construction of the highways mentioned in your letter was to be financed by bonds or from taxes levied for that specific purpose, it might not involve in any way the accounting officer, but you have not stated how the projects are to be financed; we therefore assume that no bonds or special taxes have been issued or levied.

It is therefore the opinion of this department that all the duties of the accounting officer and the budget officer should be taken into consideration and carried out before the bids are accepted for the several highway projects.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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