

COUNTY COURTS. Pro-rating funds when amount collected is less than that appropriated under Section 9874, R.S. Mo. 1929

See Supplementary Opinion attached

January 23,
1933.



Hon. Elbert L. Ford,
Prosecuting Attorney,
Kennett, Missouri.

Dear Mr. Ford:

This office acknowledges receipt of your letter dated January 16, 1933 in which you state and inquire as follows:

"I am herewith enclosing to you copy of an order, which the County Court made last year with reference to the apportioning and subdividing the County revenue under Section 9874 and Section 9985, Revised Statutes of Missouri for the year 1919. The total amount of this budget was \$62,800.00, or the anticipated revenue of this County for the year 1932. The actual revenue collected will be approximately \$40,000.00 or about \$22,000.00 short of taking care of this budget.

The Treasurer of this County has on hands at this time approximately \$20,000.00 in cash and is unable to decide how to disburse this money.

Please advise me on the following questions:

First - Should the money received for 1932 be pro-rated to the different funds as the fund itself relates to the whole amount of the budget?

Second - Should the warrants be paid in the manner which they have been issued, presented and protested to the Treasurer, not with-standing the budget?

Third - Should the money be placed in the different funds to take care of that particular fund first, in other words, should the \$12,000.00 be paid first to the care of paupers and insane persons of said County and after this is taken care of and then the next money be paid to the second class, which includes payment of County officers and after that, then the next money be placed into the third class

Hon. Elbert L. Ford.

Section 9874, Revised Statutes of Missouri, 1929, provides in substance as follows:

" The county courts of the several counties in the state are authorized and empowered at a time fixed each year to appropriate, apportion and subdivide the county revenue collected, and to be collected, money received, and to be received, for county purposes in the following order:

I. A sum sufficient for the payment of all necessary expenses in the care of paupers and insane persons;

II. A sum sufficient for the payment of building of bridges and repairing of roads, including the pay of road overseers;

III. A sum sufficient for the payment of salaries of county officers when payable out of the ordinary revenues;

IV. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of election, and fees of witnesses before grand juries;

V. A sum sufficient for the payment of the other ordinary current expenses of the county.

Section 9874, R.S. Mo. 1929, authorizing and empowering county courts to appropriate, apportion and subdivide county funds in the order named is mandatory on such county officers. The principle of law applicable in that respect is stated in Chase v. U. S., 261 Fed. 833-837, in the following language:

"An examination of the legislation of Congress shows that in many of the acts of Congress the word 'authorized' is frequently used where a duty is imposed upon a public executive officer, and in no case are the duties imposed discretionary unless, after the word 'authorized', the other words 'in his discretion' are added. As was said by the Supreme Court of the United States in Mason et al. v. Fearson, 9 How. 258, 13 L. Ed. 125:

'Whenever it is provided that a corporation or officer 'may' act in a certain way, or it

'shall be lawful' for them to act in a certain way, it may be insisted on as a duty for them to act so, if the matter, as here, is devolved on a public officer, and relates to the public or third persons. * * *. Without going into more details, these cases fully sustain the doctrine, that what a public corporation or officer is empowered to do for others, and it is beneficial to them to have done, the law holds he ought to do. The power is conferred for their benefit, not his; and the intent of the Legislature, which is the test in these cases, seems under such circumstances to have been 'to impose a positive and absolute duty'. Mayor of New York v. Furze, 3 Hill (N.Y) 612; Minor et al v. Merchants' Bank of Alexandria, 1 Pet. 46, 64, 7 L. Ed. 47, and note; Livingston v. Tanner, 14 N. Y. 64; Ralston v. Crittenden (C.C.) 13 Fed. 508; Supervisors Rock Island County vs. U. S. 4 Wall. 435, 18 L. Ed. 419".

The Supreme Court of this state in State ex rel v. Lee, 262 S. W. 344-345, has followed the same reasoning, as is shown by quotation from the opinion in the last named case, as follows:

"Preliminary. The power given by section 1181 to the state superintendent of public schools is couched in words vesting him with 'authority' to correct certain errors in apportionment. With respect to such errors as fall within the section words of that character in a statute like this are to be construed as mandatory, since 'public interests and rights are concerned'. Newburgh Turnpike v. Miller, 5 Johns.Ch. (N.Y.) 101, 9 Am. Dec. 274; 25 R. C. L. p 770."

Therefore, whatever duties are required of the county court by the provisions of Section 9874 are absolute and not a discretionary matter with that body.

Section 9985, Revised Statutes of Missouri, 1929, in the first part thereof is a re-statement in substance, of Section 9874, and it being further provided in Section 9985 that the money so set apart appropriated, apportioned, and subdivided, shall be held to be a sacred fund for the purpose for which it has been designated, and the county court shall have no power to divert the same, or to permit the funds thus set apart to be drawn from the treasury of such county, except by warrants issued by order of the court on the respective funds. Section 9986 directs the county treasurer shall separate and subdivide the revenues of the county in his hands,

and as they come into his hands, in compliance with such order of the court and the provisions of Chapter 59. It being further provided that the treasurer shall 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 the treasurer shall keep a separate account with the county court of each fund, which funds shall be known and designated respectively as the pauper fund, road and bridge fund, fund for the payment of the salaries of the county officers, fund for the payment of fees of grand and petit jurors, judges and clerks of election, witnesses before a grand jury, and contingent fund, and no warrant shall be paid out of any other fund other than that upon which it has been drawn by order of the court. Section 9986 makes it a misdemeanor for the treasurer to fail or refuse to perform the duties required of him under the provisions of Chapter 59.

Sections 12139, 12169 and 12170, Revised Statutes of Missouri, 1929, make further provision that the treasurer shall pay county revenue only on warrants issued by the county court, and Section 12139 provides that the warrants shall state on what fund the same is drawn and that the warrant should be paid out of that fund.

In the case of State ex rel Norfolk Beet-Sugar Co. v. Moore, Auditor, 69 N. W. 373, concerning the right of the State Auditor to draw a warrant on a certain fund, is found an interesting outline of the history of the necessity for appropriation by legislatures into specific funds and for specific purposes, and in the opinion is a definition of the words 'appropriate' or 'appropriation'. In that case it is sought to compel a warrant to be drawn on the fund for purposes other than for which the fund was appropriated, but the usual definition of the word 'appropriate' is not unbending in the case under consideration, because if there is a surplus in any fund appropriated by the county court after all of the liabilities of such fund have been met, that surplus may be transferred by the county court to other funds, and used for purposes other than those for which it was appropriated. Andrew County ex rel v. Schell, 135 Mo. 31.

We do not find in the Missouri cases where the courts of this state have directly passed on the question here involved, so that the question must be solved by applying general principles of statutory construction, and also by considering the conditions that are now matters of common knowledge and which may have been in the minds of the legislators when the revenue acts referred to were enacted. In Ex Parte Marmaduke, 91 Mo. 228 - 254, on the rule of construction of statute the Supreme Court of this state said:

* * * * * the letter of a statute may be enlarged or restrained, according to the true intent of the framers of the law. Whitney v. Whitney, 14 Mass. 92; State ex rel v. Emerson, 39 Mo. 80; State ex rel v. King, 44 Mo. 283; Riddick v. Walsh,

15 Mo. 519. In such cases, the reason of the law prevails over its letter, and general terms are so limited in their application as not to lead to injustice, oppression, or an absurd consequence, the presumption being indulged that the legislature intended no such anomalous results. 7 Wall. 482; 68 Ill. 38; 67 Mo. 256."

The Supreme Court of Missouri in the case of State ex rel. v. Appleby, 136 Mo. 408, had under consideration mandamus proceedings brought to compel the judges of the county court to issue warrants in payment of criminal costs. The action was to compel the transfer from a fund where there was a surplus to the contingent fund. The court in discussing the purpose and intent of what is now Section 9874, at page 413 of the opinion said:

"By the statute it could only have been intended that the county court should, in the first instance, apportion the funds approximately to the purpose mentioned, and that warrant should be drawn upon and paid out of the proper fund until it should be exhausted, or until all the liabilities for which the particular fund was apportioned should have been paid. The object of the legislature was to prevent as far as possible, discriminations against any class of liabilities or expenses of the county".

This is the only case in Missouri we find that undertakes to put a construction on Section 9874, on the question here involved. Apparently the framers of the Constitution of 1875 and legislatures subsequent thereto, under took to restrict and restrain county courts and other county officials from indiscriminate expenditure of county funds and to establish a budget system on a cash basis of operating the county government. Section 9874 was one of the sections of the law intending to carry these purposes into effect. It is true that Section 9874 commands the county court to appropriate its revenues in the order named in the statute, and the treasurer to keep his books and pay out the money accordingly. While, of course, insane persons and paupers are helpless and entitled to have their care and keep provided for and carefully guarded, it is hard to conceive that the legislature intended that no moneys could be expended, for instance, for the payment of salaries of county officials, or the fees of grand or petit jurors; judges and clerks of election, and witnesses before a grand jury, after the appropriations were made and where all revenue collected was not sufficient to pay the liabilities of all the funds until all the bridges had been built, and roads repaired that were taken in consideration by the court at the time of making its budget and appropriating the county revenue. To do so would probably result in the resignation of county officials; a partial failure to enforce criminal laws; the rights of taxpayers not be adjudicated in civil cases nor

would there be sufficient money in the contingent fund for the ordinary and necessary expenses of the county, such as repairs on a court house or jail or the procuring of insurance policies for the protection of the county against fire or windstorm. It may have been thought the classification provided for in Section 9874 should be made to prevent county officials from discriminating in favor of themselves, in the appropriation of revenues. If the taxes collected are pro-rated as it is herein held they should be, then there would be no discrimination on the part of the county court under the Appleby case. It is a matter of common knowledge that there is a vast amount of uncollected revenue or back taxes due in the various counties in the State of Missouri. This condition may continue indefinitely and if it should occur that all of the revenue collected in the county in one year could only be credited to say the first two subdivisions of Section 9874, and little or none in the last three subdivisions, chaos will reign in every county where that condition exists. We can not conclude that the legislators had in mind to bring about such a situation in the passing of Section 9874, and it should not be held to bring about that condition unless its very terms compels such a holding.

We think the legislature had in mind, as we have said, the establishment of a budget or cash basis system, and that Section 9874 provides the order of importance in which the county court should consider the various needs for moneys in fixing its estimate of the amount of revenue to be set apart. Having the whole situation in mind Section 9874 should be construed as meaning that if there be not sufficient revenue on hand or collected to take care of the entire appropriation of the county court for the necessary funds, that the amount of revenue so collected should be distributed pro rate among the funds, and in this case should be distributed as the percentage of any one fund bears to the whole fund to be distributed.

Section 12139 provides that the county treasurer shall make a record of warrants as they are presented to him and the warrants presented shall be paid out of the funds mentioned in the warrants, and in the order in which the warrants are presented for payment; that is, warrants drawn on the particular appropriated fund are first payable, and in the order of time in which the warrants are presented to the treasurer on that particular fund. If there be a surplus in the fund when the liabilities for the year in which it was appropriated have been discharged, then warrants drawn in other years according to the time of their presentment may be paid out of that surplus.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED: _____
Attorney General.