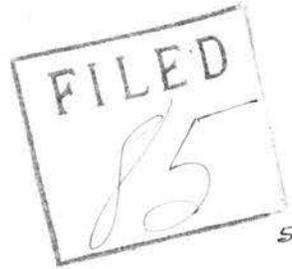


COUNTY BUDGET LAW:-In 1934 treasurer should be personally liable for
COUNTY TREASURER: payment of protesting of warrant prior to the
date of the filing of the budget, but will not
be personally liable for protesting warrants
presented in 1933.

11-12
November 10, 1933.



Mr. E. W. Sikes, Treasurer,
Wright County,
Hartville, Missouri.

Dear Sir;

We are acknowledging receipt of your letter in which
you inquire as follows:

"I have been advised that under the last session
of the Legislature that there was a law passed
that I will be held responsible if I protest any
warrants beyond the anticipated revenue for the
year of 1934. Will that apply to this year or
the year 1933?

I also want your opinion as to whether or not I
will be held responsible for protesting warrants
to pay salaries and other county expenses that
occurred in 1933 in the year 1934 as this county
has been a custom to doing."

Laws of Missouri 1933, page 346, Section 8, among other
things, provides as follows:

"* * *The county treasurer shall not pay nor enter
protest on any warrant for the current year until
such budget estimate shall have been so filed.
(This shall not apply to warrants lawfully issued
for accounts due for prior years, lawfully payable
out of funds for prior years on hand). If any
county treasurer shall pay or enter for protest any
warrant before the budget estimate shall have been
filed, as by this act provided, he shall be liable
on his official bond for such act. Immediately upon
receipt of the estimated budget the state auditor
shall send to the county clerk his receipt therefor
by registered mail.

Any order of the county court of any county authori-
zing and/or directing the issuance of any warrant
contrary to any provision of this act shall be void
and of no binding force or effect; and any county
clerk, county treasurer, or other officer, partici-
pating in the issuance or payment of any such war-
rant shall be liable therefor upon his official bond."

This law is known as the county budget law. Under this law it is the duty of the county courts, at the regular February Term of said courts in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated expenses and receipts for the year beginning January 1, and ending December 31. This law went into effect on July 24, 1933. As the county court, under the law, is not required to make and file its budget until the February Term of the court, we do not see how said law could affect the current year of 1933. No budget was made or required for the year 1933.

Under the provisions of the above section, the county treasurer shall not pay, nor enter protest for the current year until such budget estimate shall have been filed, and if he does pay or enter protest for any warrant before the budget estimate has been filed, he shall be liable on his official bond. We understand the term current year, as used in this section, to apply to the current year after the budget has been put into effect. Section 12171, R. S. No. 1929, provides as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

We do not find anything in the Laws of 1933, that repeals the above section. After the budget has been filed with the treasurer, we believe that the treasurer still may protest warrants when there are no funds on hand to meet such warrants. Under the Laws of 1933 above, however, the treasurer is prohibited from paying or protesting any warrant prior to the time that the budget has been filed with him. The statute does not prohibit protesting warrants after the budget has been filed.

While this statute went into effect on July 24, 1933, the statute makes no provision for any budget for the latter half of 1933. Having gone into effect after the February Term of the county court of 1933, we believe that the provisions regarding protests do not apply to warrants presented for payment during the year 1933. In 1934, however, if the treasurer pays or protests a warrant before the budget is filed with him, then he becomes personally liable. However, after the budget has been filed with him he may protest warrants under Section 12171 without becoming personally liable.

It is therefore the opinion of this Department that under the county budget law the county treasurer would be personally liable for the payment or protesting of any warrant in 1934, before such time as the budget is filed with him. After the budget is filed he may protest a warrant under Section 12171 in the year 1934, without personal liability. Since, under the budget

Mr. E. W. Sikes,

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November 10, 1933.

law, it is not contemplated that a budget shall be made for 1933, and no budget will be made and filed until the February Term, 1934, the treasurer would not be personally liable for protesting warrants during the current year of 1933.

Very truly yours,

A handwritten signature in cursive script, reading "Frank W. Sawyer", is written over a horizontal line.

Assistant Attorney General.

APPROVED:

Attorney General.

FWS:S