

PAYMENT OF PAST)
INDEBTEDNESS OF)
A COUNTY.)

County Courts cannot pay criminal cost
incurred in past years from current
revenue.

11-3

October 18, 1933



Mr. Edward D. Summers,
Prosecuting Attorney,
Steelville, Missouri

Dear Sir:

Your letter of September 22, 1933, has been
received in which was contained a request for an opinion
as follows:

"I wish to request your opinion upon
the following questions:

1. Can criminal costs incurred during
the year 1932, which have not been
allowed by the County Court of a County
during that year, be paid out of the
revenues collected for the year 1933.
If not, please advise how the order
allowing them for this year may be made
by the County Court so as to prevent
their payment by the Treasurer in the
order in which warrants are protested.
2. Are the warrants issued during
December of 1932 to be paid out of the
County Revenues for 1933."

Section 9874 R. S. 1929 reads as follows:

"The county courts of the several counties
of this state are hereby authorized and
empowered, at the first regular term of
such court after the taking effect of this
chapter, and at the May term every year
thereafter, to appropriate, apportion and
subdivide all the revenues collected, and

to be collected, and moneys received and to be received, in the various counties in the state, for county purposes, in the following order:

I. A sum sufficient for the payment of all the necessary expenses that may be incurred for the care of paupers and insane persons of such county.

II. A sum sufficient for the payment of all necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county.

III. A sum sufficient for the payment of the salary of all county officers, where the same is by law made payable out of the ordinary revenues of the county.

IV. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of elections, and fees of witnesses for the grand jury of the county.

V. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county; which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year."

It is clearly seen from the foregoing statute that the County Court is required to appropriate the County revenue, contemplated for the ensuing year, to certain funds to which it is solemnly pledged.

The fourth appropriation required to be made under said section relates to fees of grand and petit jurors, judges and clerks of elections and fees for witnesses.

MUNICIPAL INDEBTEDNESS LIMIT OF.

The Constitution of Missouri, Article X, Section 12, provides in part as follows:

"No county, city, town, township, school district, or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, etc."

The above cited and quoted constitutional and statutory provisions make clear the following proposition:

That a County Court cannot contract beyond the contemplated revenue in any of the various funds for any one year.

"Our present Constitution and laws mean that there came a time in the history of this State when the power (theretofore abused) to create a binding indebtedness upon a county in any one year beyond the revenue of that year levied for county purposes, was taken away from county courts-- that is, in administering the business affairs of the county the 'credit system' was abolished and the 'cash system' was introduced--the latter, however, with flexibility and play enough to allow a county court in any one year to contract, by way of anticipation, with reference to the county revenue for that year. To this end it will be found that old statutes were modified and new enacted which, in connection with the old, were intended to present a complete and harmonious scheme for administering the affairs of the county, and at one and the same time put on foot and keep going the cash system." Decker v. Diemer, 229 Mo. l. c. 330.

"The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county

for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it." Book v. Earl, 87 Mo. l. c. 252.

It therefore follows, from the reasoning of the Supreme Court in the above cases, that if the County Court may take the revenue collected in a given year, where there is not more than sufficient revenue to defray its current obligations against said funds, and absorb said funds in that way, the result would be there would be no funds with which to pay the current demands upon said funds and the consequence would be a suspension of the business affairs of the county relative to said particular fund.

It is our opinion that the county is not legally obligated to pay demands beyond its contemplated revenue for the year in which the debt was created and it follows that the criminal cost accruing against a county in the year 1932 must be paid out of the funds set apart by the County Court for that purpose for the year 1932, and if the taxes collected or to be collected, belonging to said fund for said year, are exhausted, then no obligation rests upon the county.

We further hold that if the expenditures already paid out of said funds for the year 1932 do not absorb the contemplated revenue of said funds, then the County Court may issue its warrant

against said fund, to be paid when the treasurer's books show the funds are in the treasury, belonging to said fund from the revenue of 1932.

Answering question two (2) embraced in your letter, I quote from State ex rel v. Allison, 155 Mo. 1. c. 333-5:

"It thus appears that it is not until the May term that the county court knows exactly what the aggregate assessment of the county is, and it is not until then that the rate of taxation is fixed and the exact amount of revenue to be levied is ascertained. And in view of that condition and of the constitutional provision that forbids a county to incur debts in any one year to exceed its income and revenue provided for that year (sec. 12, art. 10, Constitution), the relator contends that it conclusively follows that the fiscal year for the county begins on May 1st. The argument is not without persuasive force to show that it would be a convenient provision if the legislature should see fit to so enact, but it does not demonstrate that the statutes in their present form must receive that construction or fail of their purpose. And we must be forced to that result before we would be justified in giving to the word 'year' an artificial meaning in the face of the rule of construction and definition laid down in the contemporaneous statute above quoted. But really whilst there is some uncertainty it is not very serious. True, from January to May, one-third of the year, the county court can not know the exact amount of revenue that the taxpayers will be called on to furnish. This uncertainty exists because the exact valuation of the taxable property in the county is then unknown, and the rate of taxation has not then been fixed, yet expenses are necessarily incurred in carrying on the county government and maintaining its duty to the State. But is certainty to that degree necessary? Can not the revenue for the ensuing year be estimated on the first of January with sufficient approximation for the purpose of putting reasonably safe limits to the debts to be incurred? Even after May 1st, there must be an element of uncertainty in the amount of the county's income because all may not be collected that is assessed. Ordinarily there is not such a difference between the aggregate assessment of the county for one year, and the following, as would put the county judges to sea, and if any unusual event had taken place since the last assessment likely to produce an extraordinary diminution or increase in the value of the county's property, the county judges

would be apt to know it. The economic problem for them to solve is the amount of indebtedness it will be prudent to incur for the county for four months in view of the probable income. As a common sense business problem there is nothing very difficult about it, and if county judges are not to be accredited with sufficient discretion to determine a matter of that kind, then our whole system is wrong. The county court can keep safely within the constitutional limitation, and follow strictly the provisions of the statutes above quoted, and still count the fiscal year as beginning on January first, and ending December thirty-first. We have followed the learned counsel for the relator in his brief but we see no reason to question the soundness of the decision in *Wilson v. Knox County*, supra, or in *State ex rel. v. Appleby*, supra, to the same effect. Upon a review of the whole subject, we again conclude that the fiscal year for the county as well as the State, begins January first, and ends December thirty-first."

It follows from the foregoing case that warrants issued by the County Court in December 1932, are chargeable to the revenue of 1932. The fiscal year of the county, as well as the state, begins on January first and ends December 31st.

Very truly yours,

W. W. Barnes
Assistant Attorney General

APPROVED:

ATTORNEY GENERAL.