

COUNTY BUDGET LAW: )  
PROBATE JUDGE: )

County budget law governs payment of expenditures of probate court for supplies purchased.

January 18, 1934.



Hon. Elliott M. Dampf  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri

Dear Mr. Dampf:

This office acknowledges receipt of your letter dated January 10th, 1934, as follows:

"We would appreciate your opinion, which has been requested by the Probate Judge of this County, as to whether the Session Acts of 1933, page 340, relative to Political Subdivisions, and providing for a county budget in certain counties, applies to the Probate Judge, and His court, and if it does away with Sections 2056, 2057 Revised Statutes of Missouri, 1929."

I.

**PROBATE COURT.**

Section 2045, R. S. No. 1929, provides:

"A probate court, which shall be a court of record, and consist of one judge, is hereby established in the city of St. Louis, and in every county in this state."

Section 11782, R. S. Mo. 1929, in part provides:

"The judges of probate courts, respectively, shall be allowed fees for their services as follows:  
(Then follows a list of fees such may charge.)"

And further,

"Provided further, that whenever, after deducting all reasonable and necessary expenses for clerk hire, the amount of fees collected in any one calendar year by or for any one probate judge in any county in this state, during his term of office, and irrespective of the date of accrual of such fees, shall exceed a sum equal to the annual compensation in the aggregate from all sources and for all duties by virtue of the office, except the \$1,200.00 allowed for expenses when holding circuit court in other counties, provided by law for a judge of the circuit court having jurisdiction in such county, then it shall be the duty of such probate judge to pay such excess less ten per cent. thereof, within thirty days after the expiration of such year, into the treasury of the county in which such probate judge holds office, for the benefit of the school fund of such county, etc."

The probate judge of Cole County receives no salary or compensation as such from the county for his services. His office is strictly on a fee basis which compensates him for his services. The fees paid to the probate judge are not for any function of government performed by him for the county. But he is not allowed to retain all the fees he collects if such exceeds "the annual compensation in the aggregate from all sources and for all duties by virtue of the office, except the \$1,200 allowed for expenses when holding circuit court in other counties, provided by law for a judge of the circuit court having jurisdiction in such county."

State ex rel. Jasper County v. Gass et al., 296 S. W. 431.

Macon County v. Williams, 224 S. W. 835.

## II.

### PROBATE JUDGE NOT A COUNTY OFFICER.

The Supreme Court of Missouri, en banc, in State ex rel. Buchanan County v. Imel, 242 Mo. 293, held that a probate judge was not a county officer. We quote therefrom, l. c. 300:

"The words 'county officers' have two well defined meanings. In their most general sense, they apply to officers whose territorial jurisdiction is coextensive with the county for which they are elected or appointed. In a more precise and restricted sense, those words mean officers 'by whom the county performs its usual political functions, its function of government.' (Sheboygan County v. Parker, 70 U. S. 93, 1. c. 96.)."

And further, pages 301-302:

"Judges of the probate court are not charged with the performance of any governmental functions of the counties for which they are elected; in fact, some of them do not have jurisdiction coextensive with the counties where their offices are held. Their functions are to administer the laws pertaining to estates of deceased persons, minors and persons of unsound mind.

From the context of said section 12 of article 9, supra, it will be seen that there is very little if any better reason for classifying probate judges as 'county officers' than for so designating judges of the circuit court when their circuits are composed of a single county.

After a careful review of said section 12 of article 9 of the Constitution of Missouri, we are fully convinced that it was not intended to embrace or include judges of probate courts; and that in holding that it does embrace those officers, the case of Henderson v. Koenig, supra, is erroneous, and the same is therefore overruled."

### III.

#### DUTY OF COUNTY TO FURNISH "NECESSARIES" TO PROBATE COURT.

Section 2056 R. S. Mo. 1929, provides:

"Every probate court shall have a seal of office, of some suitable device, the expense

of which, and the necessary expense incurred by said court for books, stationery, furniture, fuel and other necessaries, shall be paid by the county."

Section 2057 R. S. No. 1929, provides:

"It shall be the duty of the county court, at the expense of the county, to provide for the judge of probate an office at the county seat, and in the city of St. Louis in such place as may be provided by the municipal assembly thereof, except in counties where such courts, for the transaction of probate business, are now held at a place other than the county seat; and in such counties he shall also keep an office at the places where courts are now held, in which places he shall keep all the books, records and papers pertaining to business there transacted, and the seal of said court."

The Supreme Court of Missouri in an early case (1883), *Gannon v. Lafayette County*, 79 Mo. 223, l. c. 226, in construing above sections said:

"With respect to the other and only remaining question, section 1184 provides (and the law was the same when the furniture was purchased) that 'every probate court shall have a seal, \* \* the expense of which and the necessary expenses incurred by said court for books, stationery, furniture, etc., shall be paid by the county.' These necessary articles are to be procured by the probate judge, and he is not required first to get an order of the county court for their purchase. Whether the furniture in question was necessary for the office, was properly submitted to the jury, who found that it was."

In *Motley v. Pike County*, 233 Mo. 42, l. c. 46, the court said:

"It was admitted that each charge in the account was reasonable. It is clear that under the

statute, the plaintiff is entitled to this item of the account under the head of 'other necessities.' The statute, section 4065, Revised Statutes 1909, reads: 'Every probate court shall have a seal of office, of some suitable device, the expense of which, and the necessary expense incurred by said court for books, stationery, furniture, fuel and other necessities, shall be paid by the county.'

Ewing v. Vernon County, 216 No. 681.

#### IV.

#### COUNTY BUDGET LAW.

Laws of Missouri, 1933, page 340, Senate Bill No. 154, Approved May 12, 1933, is the "County Budget Law." Note this contained in Section 1:

"This act may be cited and quoted as the county budget law."

Thus, when we refer to the county budget law in this opinion it should be understood to mean that law found at page 340, Laws of Missouri, 1933.

Section 1 of the county budget law provides in part as follows:

"All counties now or hereafter having a population of 50,000 inhabitants or less, according to the last federal decennial census, shall be governed by Sections 1 to 8 inclusive, of this act."

Cole County, according to the last federal decennial census has a population of 30,848 inhabitants.

Section 9 of said act reads as follows:

"In all counties in this state, now or hereafter having a population of more than 50,000 inhabitants, according to the last federal decennial census, the presiding judge of the county court shall be the budget officer of such county, or the county court in any such county may designate the county clerk as budget officer. The budget officer shall receive no extra compensation for his duties under this Act, and Sections 9 to 20 inclusive of this Act shall apply to such Counties."

Therefore, the first 8 sections and Section 22 of said act pertain to your inquiry.

Section 22 provides as follows:

"All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed."

Section 1 has this provision:

"Whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless of the source from which derived. The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31. Etc."

And further,

"The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall

be adequately provided according to the said classification and such priority shall be sacredly preserved."

It is thus seen that the county court is responsible to the preparing of a budget and to classify and pay expenditures in the order set out in Section 2 of the act. Section 2 of the act provides a classification of the proposed expenditures in the following order:

- Class 1: Insane pauper patients in state hospitals.
- Class 2: Expense of conducting circuit court and elections, jurors, witnesses, incidental court costs, judges and clerks of election and other expenses of election chargeable against the county.
- Class 3: Repair and upkeep of bridges.
- Class 4: Pay of salaries of officers and office expense.
- Class 5: Contingent and emergency expense.
- Class 6: The other expenses.

Section 3 of the county budget act provides in part as follows:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of salaries or any other expense for personal service of whatever kind during the current year etc."

And further,

"Officers who are paid in whole or in part other than out of the ordinary revenue, whether paid by fees or otherwise, shall submit an estimate for supplies in the same manner as officers who are paid a salary out of ordinary revenue. Etc."

And further,

"No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished. Etc."

Section 6 provides in part pertinent the following:

"Not later than the 15th day of January of each year, every officer who expects to claim pay for services or to receive supplies to be paid for from county funds shall submit to the county clerk the information hereinafter specified. (If state funds are received or expected to be received for all or any part of the expense such shall be considered as county funds for the purpose of this request.) Etc."

Section 8 provides in part pertinent the following:

"It is hereby made the first duty of the county court at its regular February term to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes 1 and 3 below that provided for herein. Etc."

One of the purposes of the budget law is to put the county on a cash basis. It provides, among other things, the county court shall classify proposed expenditures in a definite order (Secs. 1 and 2). Likewise, the county court shall show the estimated expenditures in the same manner (Sec. 5). It is the duty of the court to go over the estimates and revise and amend them to promote efficiency and economy (Sec. 8). And said court may (after hearing) alter or change

an estimate as public interest may require. And in order for the county court to have a knowledge of the need of the offices for money out of the county treasury for salaries and supplies, it is made the duty of these persons (officers) who will receive money for said purposes to supply this information to the county court (Secs. 3 and 6). Note this mandatory provision of Section 8:

"Any order of the county court of any county authorizing 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, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

#### V.

#### CONCLUSION.

Thus, we conclude that while (1) the probate judge is not a county officer (2) the county must pay for "all necessaries" used by the probate court; (3) neither may the county limit the probate judge to the purchase of "necessaries" for his office; (4) the probate court does not have to obtain an order from the county court to purchase articles of "necessaries"; and (5) the county budget act does not repeal Sections 2056 and 2057, supra.

Yet, we conclude, and it is our opinion, that the county budget law applies to the probate court as to the payment for supplies (articles of "necessaries"). True, the county court must pay for "necessaries" for the probate court but the budget act says in what manner, how and when moneys shall be paid for same. Thus the probate court occupies a dual status, (a) as to compensation, and (b) payment for supplies.

(a) As to compensation, the probate judge is not governed by the budget law (being on a fee basis and not a county officer).

(b) As to payment for supplies, the budget act applies (Secs. 3, 6 and 8).

Note we are using the word "payment." In other words, the practical effect is this: The "necessaries" may be purchased and must be paid by the county, but payment for same could not be made unless provision was made and included in the estimated expenditures. In other words, provision must be made in the budget law to care for

these purchases, and if no provision is included for their payment same could not be paid.

What we have attempted to do is to harmonize the sections of the budget act and those pertaining to the probate court.

The Supreme Court in *State v. Freeland*, 300 S. W. 675, having this to say:

"When different sections of the statutes bear on the subject it is a rule of construction that such sections must be harmonized if possible."

## VI.

### CONSTITUTIONALITY.

As to the constitutionality of the county budget law we do not express at this time our opinion. However, we are informed from press reports that the Circuit Court of Jackson County has declared said act unconstitutional because of matters contained therein which are not germane, or found in the title thereof. Further, this office on May 11th, 1933, by an official opinion addressed to His Excellency, the Governor, declared this:

"In so far as Sections 9 to 20 both inclusive, of the bill may seek to oust the county court of any jurisdiction to transact all of the business in the county, then such parts of the act in that respect would be of no effect.

It is well settled law in this state that a part of an Act may be declared unconstitutional and the remainder of the Act will take effect so long as the substance of the act is not destroyed in holding a part thereof unconstitutional.

*State ex rel. v. Becker*, supra, pg. 782 (cases cited),

*Mayer v. United Garment Workers*, 320 Mo. 10, 19."

Neither do we discuss or comment on the equities presented by this situation.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

---

ROY McKITTRICK  
Attorney-General.

JLH:EG