

COUNTY BUDGET ACT: County warrants should be paid according to protest and classes should be paid in order of protest.

12-27
November 30, 1934.



Mr. Sidney Everett,
Treasurer of Laclede County,
Lebanon, Missouri.

Dear Sir:

This department is in receipt of your letter of November 1 wherein you request the opinion of this department as to the following facts:

"A question regarding the payment has come to my mind. Under the budget system we have five classes of warrants. Some warrants from each class are issued and protested each month.

When paying time comes, should these warrants be paid by class or by protest, as you understand they are all paid out of the same fund. I want to know whether I shall pay class one first, then two, etc. or should I pay all classes as protested?"

As we construe the Budget Act, it did not change the financial structure of the county in its entirety. It was evidently the intention of the Legislature to compel counties to systematize the business of the county in such manner that an accurate check could be had of its financial condition at all times, besides the economic feature which might be involved.

Section 22 of the County Budget Act (Laws of Mo. 1933, p. 351) provides:

"All laws or parts of laws and expressly sections 9874, 9985, and 9986 in so far as they conflict are hereby repealed."

We cannot discern any conflict between the new County Budget Law and Sections 12139 and 12140, R.S. Mo. 1929, nor are they impliedly or expressly repealed. Section 12139 is as follows:

"He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same is presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment: Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated."

The above section sets forth the manner in which the Treasurer shall keep his books in regard to warrants. Section 12140, R.S. 1929 provides for the manner of payment of warrants and is as follows:

"No county treasurer shall refuse the payment of any warrant legally drawn upon him and presented for payment, for the reason that warrants of prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon, sufficient to pay such prior warrants and any such warrant so presented; but such treasurer shall, as he shall receive money into the treasury belonging to the fund so drawn upon, set the same apart for the payment of warrants previously presented for the ordinary current ex-

penses of the county, as mentioned in the preceding section, and in the order presented, so that no such warrant of subsequent presentation shall remain unpaid by reason of the holder of such warrants of prior presentation failing to present the same for payment after funds shall have accrued in the treasury for their payment: Provided, however, that nothing herein contained shall prevent the treasurer from receiving from the collector all scrips and warrants lawfully received by him in the payment of county tax: Provided, further, before the treasurer shall receive such scrips and warrants, the collector shall make out a list of such scrips and warrants, under oath, specifying the number and amount thereof, the date when received, and from whom received; and said list shall be filed and preserved by the treasurer."

CONCLUSION

In view of the foregoing sections, it is the opinion of this department that by the terms of the Budget Law, wherein it is said that the priority of the classes should be sacredly preserved, all warrants in Class 1 should be paid first according to their order of protest, and the payment of the other classes should follow in like order.

We are further of the opinion that Section 12140, supra, was not repealed by the new Budget Law in its entirety, but so far as it conflicts with the priority of classes as set forth in the Budget Law, the terms of the Budget Law should be followed and warrants paid accordingly.

Very truly yours,

OLLIVER W. NOLAN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General