

- COUNTY BUDGET: (1) Priority payment of classes.
- (2) Boarding of prisoners should be placed under Class 4 of the Budget Law.

July 9th, 1934.

7-16



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

Dear Mr. Ford:

This department acknowledges receipt of your letter of August 1 relating to the new "Budget Law", which was passed by the last Legislature. We herewith quote your letter in full:

"On October 31st, 1931, the Attorney General's office gave Mr. Roy Monier, Chairman State Board of Eleemosynary Institutions an opinion wherein it states that the first subdivision of Section 9874, R. S. No. 1929, provides that the necessary expenses for the care of paupers and insane persons must be provided for and apportioned, does not give such expenses a priority or lien on the revenues of the County.

Please advise me at your earliest convenience if pages 340, 341, 342, 343 and 344, 1933 Session Acts means that the classification of expenditures as outlined in Section 2, gives these specific classifications a prior lien on the revenue of the County.

In other words please advise me if all warrants issued under classification 1, 2, 3 and 4 must be paid before any warrant issued in class 5, can be paid. In reading over this new budget law, I interpreted it as setting upon these different classes a prior lien on the revenue of the County.

Please advise me what class the board of prisoners would come under in this new budget plan; since taking care of the paupers come under class 5 and since the sheriff receives sixty-five cents a day for board of the prisoners from the County I cannot interpret this in class 4 with salary of officers."

The section to which you refer is Sec. 2, p. 341, Laws of Missouri 1933, said section being as follows:

"The court shall classify proposed expenditures in the following order.

Class 1: The county court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes.

Class 2: Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1.

In estimating the amount required in class 2 the county court shall set aside and apportion in the budget a sum not less for even years than the sum actually expended in the last even numbered year and for odd years an amount not less than the amount that was actually expended during the last preceding odd numbered year.

Class 3: The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement

of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county.

Class 4: The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six.

Class 5: The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes.

Class 6: After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

You will note that under Classes 1 and 2 the statute is definite and states that Class 1 shall have priority of payment over all other classes, and in the case of Class 2, it shall have priority of payment over all classes except Class 1. In the case of Classes 3, 4 and 5 there is no mention made as to whether or not they have priority of payment as numerically mentioned. Are we then to assume that classes 3, 4 and 5 are also prior liens in the absence of the statute being definite? In Sec. 1, under the "County Budget Law", the last sentence (Laws of Mo. 1933, p. 341) is as follows:

"* * * *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."

In Class 6, under the first proviso we quote as follows:

"* * * *Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six."

Under Sec. 5, Laws of Missouri, 1933, p. 344, the following is quoted as bearing on the question:

"Class 6: Amount available for all other expenses after all prior classes have been provided for. No expense may be incurred in this class until all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protect. Provided,

however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. * * * *

Sec. 8, p.346, Laws of Mo. 1933, is as follows:

"* * * 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 of payment of any such warrant shall be liable therefor upon his official bond."

In view of the foregoing sections, it is the opinion of this Department that even though classes 3, 4 and 5 are not specifically designated as having priority of payment, it was the manifest intention of the Legislature by reference and intendment to give them priority of payment and make them prior liens and they should so be treated. This conclusion is further augmented by the fact that the Legislature added Class 6, whereas, heretofore in Sec. 9874, R. S. of Mo. 1929, which was by the Legislature repealed, there were only five classes, none of them specifying priority of payment, and the Court has held under said repealed statute that there was no priority of payment or lien, thus showing that the Legislature in the new law undertook to give the classes priority numerically.

We turn now to a consideration of the last paragraph of your letter requesting an opinion as to what class the boarding of prisoners would come under the new Budget Law. It is obvious that this expense could not come under Classes 1, 2, 3 and 6. Class 5 deals with the contingent and emergency expense of a county and inasmuch as the boarding of prisoners is actual expense that is an expense certain and in no way of a contingent or emergent character, we believe that this expense properly belongs under Class 4.

In order to analyze this class of expenditures, it is again set out:

"Class 4: The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six.

Section 11794, R. S. of Mo. 1929 sets out the duty of the county court with reference to furnishing board to prisoners:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county and by the municipal assembly of any city not in a county in this state: Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

Section 11795, R. S. of Mo. 1929 fixes the time and fee for furnishing board to prisoners, said Section being as follows:

"It shall be the duty of the county courts of each county in this state at the November term thereof in each year to make an order of record fixing the fee for furnishing each prisoner with board for each day for one year commencing on the first day of January next thereafter, and it shall be the duty of the clerk of the county court to certify to the clerk of the circuit court of such county a copy of such order, and the same shall be filed in the office of the clerk of the circuit court for the use of the said clerk and the judge and prosecuting attorney in making and certifying fee bills."

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Section 8526, R. S. of Mo. 1929 provides that the Sheriff of each county in this State shall have the custody, rule, keeping and charge of the jail within his county and of all the prisoners in such jail. Under this Section it is the duty of the sheriff to see that the prisoners are provided with food, bedding and medical attention. On this point, the Court in the case of State ex rel. Saline County v. Price, 296 Mo. 1.c. 130, said:

"Section 12551, Revised Statutes 1919 provides that 'the sheriff.....shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible.' In this capacity it became his duty to see that the prisoners confined there were provided with food, bedding and medical attention. Section 11003 makes it the duty of the county court at the November term of each year to fix the fee for furnishing each prisoner with board for each day during the following calendar year."

* * * * *

"We note, in passing, that the General Assembly, in the enactment of this law, evidently had no suspicion that it was violating the constitutional provision forbidding a change in the fees of the office during the term of the incumbent, and that it also had in mind the theory that the sheriff should not be permitted to profit by contracting with others to perform this duty for less than he himself should receive. The humane intent which pervades this law is that the county court, in its capacity as the representative of the people of the county, should itself assume the duty of providing reasonable sustenance for prisoners through the officer charged with their custody, who should not be permitted to profit by the performance of that duty. While his fees for compensation for other services pertaining to his official duties were fixed by law, and protected by constitutional immunity, from change during his term of office, his compensation for feeding prisoners remained under the control of the county court to be fixed annually as circumstances might indicate.

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Neither the constitutional power of the Legislature, nor of the county acting within legislative authority to fix this compensation from time to time, has been questioned. It is founded in the very nature of the thing itself."

The general rule as stated in 50 Corpus Juris, p.361 shows clearly that the boarding of prisoners is a part of the duty of the sheriff. This rule is as follows:

"Where the statute merely allows a certain sum for the boarding of each prisoner, or allows the actual cost of boarding, the sheriff is not entitled to any additional compensation for services in keeping the jail or looking after the prisoners, as this is a part of his general duty."

Class 4 under the new Budget Law requires the county court to set aside an amount sufficient to pay for the conduct of the offices of all county officers. Inasmuch as it is the express duty of the sheriff to board prisoners, the expense of boarding prisoners becomes a necessary part of the conduct of his office.

In view of the foregoing therefore, it is the opinion of this Department that this expense should be placed under Class 4 of the new "Budget Law" as passed by the General Assembly of Missouri in 1933, Laws of Mo. 1933, p. 340.

Respectfully submitted,

OLLIVER W. NOLEN

APPROVED:

ROY McKITTRICK
Attorney-General

JOHN W. HOFFMAN, Jr.
Assistant
Attorney-Generals

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