

(1)

COUNTY WARRANTS: It is permissible to issue county warrants in payment of officers' salaries and accounts when warrants have already been issued to the amount of the anticipated revenue;

(3) Claims against Co. for warrants issued in excess of anticipated revenue can be paid out of surplus of subsequent years.

(2)

Officer who issues warrants in excess of anticipated revenue not civilly or criminally liable
January 11, 1934.



Hon. O.H. Gramling,
Clerk of County Court,
Sullivan County,
Milan, Missouri.

Dear Sir:

This department acknowledges receipt of your letter relative to county warrants in your county, the contents of same being as follows:

"Will you kindly advise the Sullivan County Court if it would be permissible to issue county warrants, in payment of officer's salaries and accounts due from Sullivan County, when warrants have already been issued to the amount of the anticipated revenue?"

Would any officer who issued warrants in excess of the anticipated revenue be liable on his bond or criminally liable?"

What would you advise as to how the claims against the county may be paid?"

I.

It is permissible to issue county warrants in payment of officers' salaries and accounts when warrants have already been issued to the amount of the anticipated revenue.

In discussing the above question, there are a number of statutes which bear indirectly on the same, the most pertinent being Section 12162, R.S. No. 1929, which is as follows:

"The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; and if any person, being served with such summons, shall not appear according to the command thereof, the said court may compel his appearance by attachment; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said court may issue a summons, directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to said court, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with or transmit the accounts, books, documents or papers, or show good cause why he does not, at the time appointed for his appearance, the said court may enforce the delivery thereof by attachment; and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, and may commit to jail any person who shall refuse to answer any lawful question: Provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

We also quote herewith, Section 12171, R.S. No. 1929, which is 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."

Under Sec. 12162, supra, we find it the duty of the county court to adjust and settle all accounts, and under Sec. 12171, supra, the duties of the county treasurer are set out respecting warrants when there are no funds available for the paying of same.

In the decision in the case of Wilson v. Knox County, 132 Mo. 387, the Court recognizes that the various funds become exhausted, and in the course of the opinion makes the following comment (l.c. 401):

"But those cases bear no analogy to the case in hand, which is an action upon obligations created and imposed upon the county by law, payable out of the revenue to be collected for county purposes. It is a county debt, the fund for the payment of which the county court has power 'to create and replenish by taxation'. That it must be paid out of funds appropriated and set apart for it, like all other demands, or that there is no money in the fund upon which the warrant is drawn, is no reason why the demand should not be established by judgment. 'A warrant lawfully issued in payment of an indebtedness of one year may be paid out of the revenues of a subsequent year'. Reynolds v. Norman, 114 Mo. 509."

A decision which has "weathered the storm" for many years respecting warrants is the case of Kansas City, Fort Scott & Memphis Railroad Co. v. Thornton, 152 Mo. 570, wherein the court says (l.c. 575):

"The result was, overwhelming debts were contracted, which necessarily went unpaid or excessive taxation had to be levied to pay them; The effect of which impaired the credit of the counties and cities, engendered recklessness and extravagance in the management of the public business and constantly oppressed the tax-payers. These were the evils that sections 11 and 12 of article X of the Constitution were intended to remedy, first, by limiting the rate of taxation and, second, by limiting the yearly expenses to the revenue provided for each year. The wisdom of these safeguards has been fully demonstrated by the experience and improved financial status of the counties and cities since those provisions were adopted. It is

duty of the courts to enforce the organic law and to brush aside any statute which conflicts with it whether it was passed before or after the Constitution was adopted. Under these provisions of the Constitution warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued, and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, only the surplus of revenue collected for any one year can be applied to the deficit of any other year. "

Likewise, we interpret the decision in the case of *Watson v. Kerr*, 312 Mo. 549 as bearing on the instant question. In that case Judge Ragland said (l.c. 560) 279Sw612

"It is quite clear that the county court, in May when it made the levy, estimated that the taxes accruing therefrom together with other sources of income would yield the sum of \$48,000 and that that sum would be sufficient to meet the current expenses of the county for the year. This estimate necessarily included the indebtedness which had at that time been already incurred in the purchase of the infirmary site. The contract of purchase on its face shows that it was intended to be a cash transaction, that is, that the purchase price was to be paid out of funds received into the treasury during the year. From the record facts it is clearly inferrable that the court in estimating the income and expenditures for the year was of the opinion that the indebtedness for the infirmary site could be incurred and the total expenditures still be kept within the income. Its good faith in the matter is not impeached by anything that appears in the record. Mere error of judgment is not

sufficient for that purpose; there must have been fraud or a palpable attempt to evade the constitutional provision."

In the light of the above decisions, it is the opinion of this department that in the absence of fraud, you may continue to issue warrants for valid indebtedness, although your county has already issued warrants equal to or beyond the anticipated revenue. The excess warrants, or deficit, can be taken care of in the manner set out in the case of Kansas City, Fort Scott & Memphis Railroad Co. v. Thornton, supra, viz: "the surplus of revenue collected for any one year can be applied to the deficit of any other year."

II.

An officer who issues warrants in excess of the anticipated revenue would not be liable civilly or criminally.

Under Section 9874, R.S. Mo. 1929 it is made the duty of the county court at the May term thereof to appropriate a portion and subdivide all the revenue collected and to be collected, moneys received and to be received, 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."

Section 9874, R.S. Mo. has been amended (Laws of Mo. 1933, p. 351); however, as the levies of your county were made under the old section, we will continue to deal with the same.

Section 9874, supra, making it mandatory on the county court to carry out the provisions of the same, the county court can only use its best and honest judgment and anticipate the revenue for the various funds. It cannot be said that the county court is infallible and can estimate exactly the amount which will be needed. We have no penal statute which would subject any official issuing warrants in excess of the anticipated revenue to a prosecution, and as stated in the case of *Watson v. Kerr*, supra,

"Here error of judgment is not sufficient for that purpose; there must be fraud or a palpable attempt to evade the constitutional provision."

Such a condition being absent, no officer would be liable civilly.

III.

Claims against the county for warrants issued in excess of the anticipated revenue can be paid out of the surplus of subsequent years.

Under the Constitution of the State of Missouri, Article X, Section 11, which is as follows:

"Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes, *****"

the county is precluded from becoming indebted beyond the revenue provided for in a year unless by consent of two-thirds of the voters.

In view of the section quoted in subdivision I of this opinion, relating to the duty of the county treasurer respecting

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protested warrants, these warrants become in the nature of promissory notes, and as was said in the case of Kansas City, Fort Scott & Memphis Railroad Co. v. Thornton, supra, "it was intended by Sections 11 and 12 of Article X of the Constitution to abolish the credit system and establish a cash system in public business. The revenue for any one year must be applied to the payment of the current expenses for that year and only the surplus after these have been paid can be applied to liabilities of other years".

Thus, we see that the surplus of subsequent years can be used to take up the outstanding county warrants. This theory is further strengthened by the decision of the court in the case of State ex rel. v. Johnson, 162 Mo. 621, which adheres to the above decision.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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