

COUNTY WARRANTS: If County Court has carried out its duties under the County Budget Law, warrants should be paid out of funds mentioned in warrants in the order in which they were protested.

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February 26, 1934.



Hon. W. Irvin Jackson,
Prosecuting Attorney,
Wright County,
Hartville, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of January 23, which is as follows:

"The County Treasurer of this county has given notice that he will on the 25th day of January 1934 pay a portion of the county warrants drawn on 1933 county revenue. I might further say that in May 1933, our County Court met and set aside a certain per cent of the anticipated county revenue for 1933 into the following funds, to-wit: Pauper Fund, Jury and Election Fund, Salary Fund and Contingent Fund.

Before the Treasurer gave notice of the payment of a portion of these warrants as aforesaid, I advised him that under Sections 9985, 9986, 12139 and 12140 of Rev. St. of Mo. 1929, he was bound to apportion the funds to be paid as the County Court had apportioned them in May 1933, and that each warrant presented for payment should be paid out of the funds mentioned in such warrant in the order in which said warrants were protested.

The Treasurer is not inclined to take my opinion in this matter or to pay these warrants without first having your opinion thereon and so I am accordingly asking that you mail me your opinion on the following question, to-wit:

Shall the warrants presented for payment be paid out of the funds mentioned in said warrants, in the order in which said warrants were protested, or shall the warrants presented for payment be paid in the order in which they were protested without regard to the funds on which they were drawn."

We note you have advised your County Treasurer that he should apportion the funds to be paid in the manner in which the County Court apportioned them at the regular May term 1933, and that each warrant presented for payment should be paid out of the funds designated in the warrant in the order in which said funds were protested. It appears that you base your opinion according to Sections 9985, 9986, 12139 and 12140, R.S. Mo. 1929. As you appear to be familiar with these sections, we will not quote them in this opinion; however, you might have rendered your opinion according to the decision in the case of State ex rel. v. Johnson, 162 Mo. 621, which in substance is as follows:

"A county warrant valid when issued is not rendered invalid because the revenue provided to pay it is not collected during the year in which it was issued, or is misappropriated by the officers of the county for whose act the holder of the warrant is not responsible. On the contrary, the surplus county revenue remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected, may be used in the payment of outstanding valid unpaid county warrants for previous years.

Such warrants are to be paid in the order of their presentation and registration, and are not payable pro tanto if there is not a sufficient fund to pay all.

Where such surplus is applicable to the payment of the warrants of previous years in the order of their registration, it is the duty of the county treasurer to pay them without waiting for an order of the county court distributing such surplus among the various county funds. No further appropriation or order by the court is necessary. The warrant itself is the voucher the law recognizes as the treasurer's authority for paying it."

We call your attention to the fact that the Legislature of 1933 in the new Budget Law, Laws of Mo. 1933, Section 22, page 351, repealed Sections 9985 and 9986. Section 22, supra, 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."

Sec. 12139, R.S. No. 1929, dealing with the manner in which the Treasurer shall keep books for entering warrants, and Sec. 12140, dealing with the payment of warrants, were not expressly repealed by the Legislature and do not appear to be in conflict with the County Budget Law.

In this connection we call your attention to Section 2, Laws of Mo. 1933, page 341. This section deals with the classification of expenditures, under which section Wright County should be subjected, as its population so classifies it that it comes within the first eight sections of the County Budget Law. Section 2, supra, sets out six classes of proposed expenditures, Class 6 being as follows:

"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."

We also call your attention to the last proviso, "providing that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

CONCLUSION

Assuming that your County Court has carried out the duties incumbent upon it under the County Budget Law up to the present time, it is the opinion of this department that the warrants in question should be paid out of the funds mentioned in said warrants in the order in which the warrants were protested, and that no conflict exists with the County Budget Law.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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