

COUNTY BUDGET LAW: Liability of counties for failure to pay  
eleemosynary accounts when due; liability of  
counties under budget of eleemosynary board for  
insane patients of the county. X

12-27  
December 10, 1934.



Hon. W. Ed Jameson,  
President, Board of Managers,  
State Eleemosynary Institutions,  
Jefferson City, Missouri.

Dear Sir:

In accordance with your recent request  
of this department, we submit you the following relative  
to questions which have arisen under the new Budget  
Law relating to counties of fifty thousand population  
and less:

Your first question relates to counties  
of less than fifty thousand population, and is as  
follows:

"What can be done under the  
new Budget Law with reference  
to delinquent eleemosynary  
accounts owned by counties  
less than fifty thousand  
population for the current  
year 1934?"

The first eight sections of the County Budget  
Law relate to counties of less than fifty thousand popu-  
lation. Class 1 of Section 2, page 341, Laws of Missouri  
1933 deals solely with insane pauper patients in state  
hospitals, and is as follows:

"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 ob-  
ligation against the county and  
shall have priority of payment  
over all other classes."

#2 - Honorable W. Ed Jameson

From the above and foregoing, it is apparent that the county court and county officers are without authority to pay any claims of any kind until Class 1 of the Budget Law has been paid in full. In the event the county court does pay out county revenue for classes other than Class 1, and at the end of the year leaves Class 1 unpaid, in whole or in part, then the issuance of warrants and the payment of county money to be applied on other classes of claims prior to the full payment of Class 1, would be in violation of the Budget Law.

Section 8 of the Budget Act, l.c. 346, provides:

"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."

It is, therefore, the opinion of this office that the county court, county clerk and county treasurer who participate in any manner in the issuance and payment of second, third, fourth, fifth or sixth class claims prior to the full payment of Class 1 of the Budget Law may be held personally liable for the balance due Class 1 claims. Suits may be instituted against such officials, against themselves, and against those who have posted the bond.

It is now established that public officers are liable for the wrongful payment of money in their hands. Consolidated School District No. 6 of Jackson County v. Shawhan et al, 273 S. W. 182. The Eleemosynary Board is given authority to institute suits in courts of law to collect all debts and demands whatsoever due the Eleemosynary Institutions, Section 8615, R. S. Mo. 1929, and upon the rendition of a judgment in any suit instituted in behalf of an Eleemosynary Institution, the court shall assess and tax as costs a reasonable attorney's fee in favor of the attorney in behalf of the institution, Section 8616, R. S. Mo. 1929

Your second question states:

"What can be done with reference to the collection of accounts due eleemosynary institutions by counties over fifty thousand population for the current year 1934, and also for delinquent accounts of prior years? "

In discussing your first question, we included a portion of Section 14, Laws of Missouri 1933, page 348, but in order to clarify the answer to the question, we again quote as follows:

"Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year. Payments of any legal unpaid obligations of any prior year, however, shall be a first charge in the budget against the revenues of the budget year; \*\*\*"

The portion of Section 14, above quoted, has heretofore been fully discussed in an exhaustive opinion rendered by this department on December 12, 1934; therefore, we will not again discuss the same. Copy of the opinion is hereto attached and we believe it will properly answer the above question.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney General.