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COUNTY BUDGET ACT:

The surplus in any class may be used to make up the deficit in any other succeeding class when it does not jeopardize priorities of payment of the other classes.

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December 28, 1934



Honorable R. B. Osborn  
Prosecuting Attorney  
Wayne County  
Greenville, Missouri

Dear Sir:

This Department is in receipt of your letter of December 28, 1934, wherein you make the following inquiry regarding the County Budget Act.

"I have advised the County Court of my county that they should take any money in Class 3 and put in class 4 under the Budget Law of this state, when all claims which have priority over class 3 have been cared for and there is a surplus left in Class 3.

In other words we have a surplus in the Road and Bridge Fund with no outstanding obligations in Class 1, 2 and 3. I have further advised them that they could use the surplus in any class prior to Class 4 when there are no outstanding obligations against those classes to the extent of 90 per cent of the anticipated revenue in that particular class.

Will you please advise me if I am correct."

The 1933 session of the Legislature of Missouri created six classes and thereby divided and budgeted the funds of the county according to the terms as set forth in the respective classes. You are doubtless familiar with

the classes and we shall not burden this opinion by quoting the same. A portion of Section 1, page 341, Laws of Missouri 1933 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."

The first three of the classes mentioned in Section 2 are, by its very terms, made prior liens on the fund of the county. Classes four and five have been interpreted by this department to also be prior liens. By the terms of Section 1 above quoted the main and essential duty of the county court is to sacredly preserve the priorities. You state in your letter that classes one, two and three are amply provided for and have met all the obligations for the year 1934 and there remains a surplus in class three. A question arises as to whether or not the surplus in class three can be transferred to class four, in which class we assume there is a deficit. This department recently rendered an opinion to the Honorable J. A. Yaden, Clerk of the County Court at Albany, Missouri, in which we said:

"The New County Budget Law contains the phrase (Sec.1, page 341) '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.' We are, however, of the opinion that if any balance now remains in any of the five classes which are entitled to priority, the balance, or surplus, may be transferred to Class 5, this being upon the condition that the County Court has over-estimated the amount needed for the various classes and that it is obvious there will be a surplus at the close of the year, or when the new budget

is made and that the priority of any of the classes will in no wise be jeopardized. However, we recommend this course purely at the risk of the County Court, as there is no provision made for transferring balances of funds unless same is done in compliance with Section 12167 R. S. Mo. 1929, which is as follows:

'Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance.'

As stated in the above opinion to Mr. Yadon, there is no express provision in the first eight sections of the County Budget Act which is applicable to your county, namely, Wayne, we do not consider it necessary to make any transfer of any surplus funds to any given class. If it is desired to use the funds of any class in which there is a surplus, the surplus may be used by any succeeding class, the main object being to sacredly preserve priority of all classes which have prior liens and precede the class in which the surplus is sought to be used. It has been urged by some that the surplus arising from any of the classes might not be used by another class, due to a prohibition in Section 8, Laws of Missouri 1933, page 346, which 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 payment or issuance of any such warrant shall be liable therefor upon his official bond."

Honorable R. B. Osborn

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December 28, 1934

We interpret this portion of the section to relate solely to the issuance of warrants, and the using of any surplus in any one of the funds as hereinbefore detailed would not be a violation of this section or subject any officer to liability upon his official bond. In other words, a county court of a county can use the funds of any class for any legitimate purpose just so long as the priorities are sacredly preserved.

#### CONCLUSION

It is the opinion of this department that your county court may use the surplus funds now in Class 3 for any deficit which might be in Class 4, or succeeding classes, if all obligations have been and will be met at the close of the year.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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