

- COUNTY BUDGET ACT:
- (1) Priority of classifications.
 - (2) Treasurer required to keep records and apportion money according to classifications of Section 2.
 - (3) Surplus money of county on hand January 1, 1934 to be classified, apportioned and paid out according to the County Budget Act.
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March 7, 1934 3-9

Honorable John S. Phillips
Prosecuting Attorney
Poplar Bluff, Missouri



Dear Mr. Phillips:

This Department acknowledges receipt of your letter dated February 9, 1934, as follows:

"It seems there is some question among the county officials here in regard to the budget law which was passed by the legislature, and there are a couple of questions which I would like to have answered which I am unable to find in the statutes or in the special laws.

1. Is it the duty of the County Treasurer to apportion the cash received in various classes the same as the county clerk apportions the anticipated revenue of the county? And in case that he does have to so apportion the cash, then does the first class, to-wit, the Eleemosynary Institutions, have to have their quota filled first and then the second class next and so on down the line, or does he take the cash received and apportion it to the six different classes in their respective amounts? It seems to me off hand that the latter would probably be the more logical solution, because if the first class has their portion filled first, it would be

quite a time before the sixth class would have any money or any portion of their money at all.

2. Does this budget law apply in any way to any money that was received in 1933? In other words, say that a county has a surplus at the end of the year 1933, then is it necessary to take this surplus and apportion it according to the budget law in with the money received in 1934, or does the budget law refer only to the money which is received after that law was passed, or in other words, will the apportionment this year apply only to the 1934 revenue?

I would appreciate an early reply to this inquiry as I am asked about this by the county officials almost every day, and I am at a loss as to what to tell them."

We are assuming that your county has a population of fifty thousand inhabitants or less and is therefore governed by Sections 1 to 8, both inclusive, Laws 1933 page 340.

1.

We are inclosing you herewith copy of an opinion of this office dated September 7, 1933, holding that Section 2 of Laws 1933 page 341 creates five priority classifications in the order in which the classes are numbered in the section.

The amounts payable under any classification should be paid before any amount is paid under the succeeding classification.

2.

Section 1 of the above laws in part provides:

"The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare

and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31."

It being further provided in the section that:

"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."

Section 8 above referred to provides in part:

"* * * The county clerk shall within five days after the date of approval of such budget estimate, file a certified copy thereof with the county treasurer, taking his receipt therefor, and he shall also forward a certified copy thereof to the state auditor by registered mail. The county treasurer shall not pay nor enter protest on any warrant for the current year until such budget estimate shall have been so filed. (This shall not apply to warrants lawfully issued for accounts due for prior year, lawfully payable out of funds for prior years on hand). If any county treasurer shall pay or enter for protest any warrant before the budget estimate shall have been filed, as by this act provided, he shall be liable on his official bond for such act. Immediately upon receipt of the estimated budget the state auditor shall send to the county clerk his receipt therefor by registered mail.

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."

So a certified copy of the budget estimate is required to be filed with the county treasurer for which he must give his receipt, and accordingly he would have full knowledge of the contents thereof and of the classifications provided for by the law. The county treasurer is prohibited from paying or entering protest on any warrant for any current year until such budget estimate shall have been filed with him, for a violation of which he is liable on his official bond.

While the act does not specifically so say, as a practical matter and in order to carry out the purposes of the budget act, we are of the opinion the county treasurer should keep his books and apportion the moneys in his hands in accordance with the classification of expenditures as set out in Section 2 of the county budget law. In no other way would he know when warrants would be properly payable out of any succeeding priority classification.

3.

Sections 1 to 8, both inclusive, of the county budget law do not specifically provide that the Act shall apply to a surplus on hand at the beginning of the year 1934. However, referring to the estimated receipts required to be filed by the county court with the county treasurer, as above set out, Section 1 further provides:

"The receipts shall show the cash balance on hand as of January 1st and not obligated* * *."

While Section 14 of the Act does not apply to your county yet the intention may be ascertained from that part of the section dealing with surplus at the end of any fiscal year in counties having over fifty thousand inhabitants. The section in part reads:

March 7, 1934

"Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year."

The surplus moneys on hand on January 1, 1934 would be moneys belonging to the county and as to which it would be the duty of the county court to cause to be disbursed in the transaction of the business of the county. Such moneys could only be disbursed according to the provisions of the county budget act.

We, therefore, are of the opinion that the surplus moneys of your county on hand on January 1, 1934 should be handled, classified and apportioned in the same manner as moneys received during the year 1934.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC

Inclosure