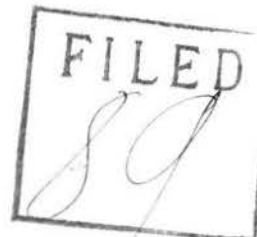


COUNTY WARRANTS: Warrants reduced to judgment do not lose their priority nor does the judgment extinguish priority.

2-24

February 21, 1934.



Hon. Edward D. Summers,  
Prosecuting Attorney,  
Crawford County,  
Steelville, Missouri.

Dear Sir:

This department acknowledges receipt of your letter requesting an opinion, as follows:

"I wish to request an opinion from your office as to whether or not a judgment based on numerous county warrants merges the warrants into itself so that the warrants lose their original priority of payment. In other words, should the Treasurer pay a warrant, regularly protested, as of the date of the original protest, or as of the date of the judgment rendered upon it?

The statute provides that warrants shall be payed in the order in which they are protested and the question I have in mind is what effect, with reference to the priority of payment does a judgment have in extinguishing or continuing such priority?"

I.

WARRANTS REDUCED TO A JUDGMENT DO NOT  
LOSE PRIORITY, NOR DOES THE JUDGMENT  
EXTINGUISH PRIORITY.

Section 12139, R.S. Mo. 1929 provides the manner in which the county treasurer shall keep his warrant book and is as follows:

"He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same was presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment: Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated."

Section 12140, R.S. Mo. 1929 relates to the manner of payment of warrants, and is as follows:

"No county treasurer shall refuse the payment of any warrant legally drawn upon him and presented for payment, for the reason that warrants of prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon, sufficient to pay such prior warrants and any such warrant so presented; but such treasurer shall, as he shall receive money into the treasury belonging to the fund so drawn upon, set the same apart for the payment of warrants previously presented for the ordinary current expenses of the county as mentioned in the preceding section, and in the order presented, so that no such warrant of subsequent presentation shall remain unpaid by reason of the holder of such warrants of prior presentation failing to present the same for payment after funds shall have accrued in the treasury for their payment: Providing, however, that nothing

herein contained shall prevent the treasurer from receiving from the collector all scrips and warrants lawfully received by him in the payment of county tax: Provided further, before the treasurer shall receive such scrips and warrants, the collector shall make out a list of such scrips and warrants, under oath, specifying the number and amount thereof, the date when received, and from whom received; and said list shall be filed and preserved by the treasurer."

The Court in determining this question in the case of State ex rel. v. Hortsman, 149 Mo. 290 said (l.c. 295-6):

"For certain purposes a judgment creditor is in a more advantageous position to enforce payment of his debt than a simple contract creditor. For example, as is argued by the learned counsel for the relators, a judgment creditor may, under certain circumstances invoke the writ of mandamus in his aid, while a simple contract creditor under the same circumstances, would have no such remedy. That is because, if the respondent should deny the validity of the debt, that issue could not be tried in such a suit. It may be doubted if the prosecuting attorney of the county could be compelled by mandamus to petition the circuit court to order the assessment provided for in section 7654, Revised Statutes 1889, since the law requires of him the exercise of his judgment as to its necessity; but if it be conceded that relators, by virtue of being judgment creditors could have compelled the county officers to put that machinery in motion, that is all they could have done. Their judgment gave them no lien on the property or revenue of the county, and they could not have compelled the county court to levy a tax to pay their debt in preference to other debts of equal merit. In this case the county court of its own motion instituted the procedure required by the statute, and it recognizes the validity of the debts evidenced by warrant. The fund now in the hands of the county treasurer is not the

product of any action taken by the  
relators. The law gives them no lien  
on it and there is no reason why they  
should have it applied to their debt  
in preference to others."

CONCLUSION

From the foregoing we are of the opinion that when  
warrants are reduced to a judgment they do not lose their orig-  
inal identity nor their original priority of payment.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

---

ROY McKITTRICK,  
Attorney General

OWN:AH