

COUNTY BUDGET ACT: Liabilities imposed by Sec. 20 do not apply to officials in counties of less than 50,000 inhabitants.

8-29
August 28, 1935.



Mr. C.W. Bass,
Clerk of County Court,
Osceola, Missouri.

Dear Sir:

This department is in receipt of your letter of August 20 making the following inquiry regarding the County Budget Act:

"Under the above law our county court approved the budget made up for this year by this office the 1st of February this year, same being made according to sections 4 and 5, S.B. 154 laws of 1933.

"As suggested in Section 5 of the above named law, one-fifth of the estimated revenue was placed in Class 5 which in this instance amounted to \$9,000.00. At the present time warrants have been allowed by the court and drawn against this fund to an amount slightly in excess of \$9,000.00. In our opinion, in order to carry on the balance of the year, it will be necessary to use practically \$9,000.00 more against Class 5.

"It is noted in Section 20 of S.B. 154, Laws of 1933 that the accounting officer or in this county, the County Clerk, is held responsible on his bond for all warrants written against the funds of any class in excess of that estimated for that fund. Does this section apply to counties of this size?

"Section 1 of this act stated that 'all counties now or hereafter having a population of 50,000 inhabitants or less according to the last federal census, shall be governed by Section 1 to 8 inclusive of this act.'

"Will you please give us your opinion as to whether Section 20, S.B. 154, Laws of 1933, applies to counties of this size, population 13,289, and if so, what provision can be made to take care of Class 5 expenditures for the balance of this year?"

Your precise question is whether or not Section 20 of the County Budget Act (Laws of Mo. 1933, page 351) is applicable to counties of the population of St. Clair. Section 20 referred to provides:

"The accounting officer shall be personally liable and liable on his bond for the amount of any obligation incurred by his erroneous certification as to the sufficiency of an appropriation or of a cash balance, or for any warrant drawn when there is not a sufficient amount unencumbered in the appropriation or a sufficient unencumbered cash balance in the fund to pay the same, or for the payment of any amount not legally owing by the county.

"Any officer purchasing any supplies, materials or equipment shall be liable personally and on his bond for the amount of any obligation he may incur against the county without first securing the proper certificate from the accounting officer.

"Such other officers as the county court may require shall each give surety bond in such amount as may be fixed by order of the county court for the faithful performance

of his duties and for a correct accounting for all moneys and other property in his custody. The sufficiency of the sureties shall be approved by the county court. Any premium on such bonds shall be paid by the county."

Section 1 of the Budget Act (Laws of Mo. 1933, page 340) reads in part as follows:

"This act may be cited and quoted as the county budget law. All counties now or hereafter having a population of 50,000 inhabitants or less, according to the last federal decennial census, shall be governed by Sections 1 to 8 inclusive of this act. * * * *"

Section 9 of the Act (page 346) provides:

"In all counties in this state, now or hereafter having a population of more than 50,000 inhabitants, according to the last federal decennial census, the presiding judge of the county court shall be the budget officer of such county, or the county court in any such county may designate the county clerk as budget officer. The budget officer shall receive no extra compensation for his duties under this Act, and Sections 9 to 20 inclusive of this Act shall apply to such counties."

Inasmuch as the above quoted section states that counties of more than 50,000 inhabitants are to be governed by Sections 9 to 20 inclusive, we are of the opinion that any violation on the part of an officer insofar as it relates to the County Budget Act would not be amenable to Section 20. Such officer, if liable, would be subject to the provisions of Section 8, which provides 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 issuance or
payment of any such warrant shall
be liable therefor upon his
official bond."

Section 1 of the Act directs the county court to divide or classify proposed expenditures into six classes and to sacredly preserve the priorities of the classes. Section 2 of the Act sets forth the six classes. There is no provision made in the event the estimates are less than the expenditures in any one class. If there are any funds in Class 6, the same may be used to take care of the additional expense which has arisen in Class 5.

As a further suggestion, at the close of the fiscal year, if there remain any excess funds in any of the classes after all the priorities have been sacredly preserved, such excess may be transferred to Class 5 and used for the deficiency.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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