

COUNTY BUDGET ACT; Conditions under which County Court may reallocate funds.

June 26, 1935.



Hon. Louis W. Block,
County Clerk,
Gasconade County,
Hermann, Missouri.

Dear Sir:

This department is in receipt of your inquiry requesting an opinion as to the following matter:

"This county is in need of additional funds other than what was set aside in Class 3 to buy right-of-way for farm-to-market roads, which was unforeseen when the budget was made. We have ample funds in Class 1, 2 & 4 to buy this right-of-way and need not protest warrants in any class if we could apply the funds where needed.

"Gasconade County has always operated on cash bases and has never protested any warrants, and it is our desire to remain so. At the close of 1934 business all cash on hand in the classes of expenditures as outlined in Sec. 2 of 1933 laws was carried over into the 1935 budget according to a ratio what we then thought to be right. But now the court is called to buy right-of-way with plenty of money on hand but in the wrong class. Please advise how we use this excess money now in the other classes for class 3. * * * *"

You state in your letter above quoted that you desire to purchase the rights-of-way for farm-to-market roads from the funds in Class 3 of the budget (Sec. 2, page 341, Laws of Mo. 1933), but in making up the original budget you did not include sufficient funds to take care of this unforeseen expenditure. Class 3 of the County Budget Act provides as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

We are of the opinion that funds for rights-of-way for farm-to-market roads should not be taken from this class. The language of the statute is not broad enough to include such an expenditure; it refers solely to the "upkeep, repair or replacement of bridges on other than state highways (and not in any special road district."

Classes 1, 2 and 4 are definite in their terms and funds for the purchase of rights-of-way could in no event come from those classes. Class 5 is general in its terms and provides for a fund to be used as contingent and emergency expense. We deem this class sufficiently general in its terms to include funds for the purchase of rights-of-way providing your county has surplus funds in this class.

Class 6 provides that any funds remaining after the five previous classes have been provided for may be used for any lawful purpose. You state that your county is on a cash basis and has no outstanding warrants; hence, any funds in this class may be used for the purchase of rights-of-way for farm-to-market roads.

Regarding the use of surplus funds which exist in Classes 1, 2 and 4, the County Budget Act does not provide for the shifting of balances from one class to another. There is a special prohibition under Section 8 of the Act (page 345) wherein the amount as placed by the county court in class 1 cannot be changed after the estimate is made. This section further provides that within five days after the approval of the budget, a certified copy must be filed with the county treasurer.

Section 12167 and Section 12168 provide that any balance at the close of the year may be used by any fund which may be in need of said balance. We are of the opinion that if any balances exist in any of the classes which you have mentioned at the close of the fiscal year, and such balance is not needed by any other fund, the balance may be used for the purchase of the rights-of-way in question.

Taking into consideration the fact that your county appears to be in splendid financial condition, the main duty of the county court as contained in Section 1 of the County Budget Act (p. 341) is to "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." That burden rests upon the county court and the other officers, and if the surplus funds from one of the classes can be used so that the priority of payment will not be jeopardized, then the spirit of the Budget Act will have been preserved and we can discern no liability on the part of the officers under Section 8, which provides in part 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."

This method, however, is merely in the form of a suggestion and if followed by the county court, it must be done at their peril in the event the funds of any of the classes are jeopardized and priority of payment is not sacredly preserved. It is our opinion, however, that a safer plan is as suggested above, i.e., to use the surplus funds, if any, in Class 5 or the funds of Class 6.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

OWN:AH