

COUNTY BUDGET ACT: County court incurs no liability if warrants are issued in excess of estimate as contained in the budget.

9-20
September 20, 1935.



Honorable James Haw,
Prosecuting Attorney,
Mississippi County,
Charleston, Missouri.

Dear Sir:

This department is in receipt of your letter of September 13 making certain inquiries relative to the County Budget Act of 1933 as it may apply to a condition now existing in your county. The pertinent part of your letter is as follows:

"Mississippi County is a county having less than 50,000 inhabitants. Counties of this population are governed by sections 1 to 8 inclusive of the County Budget Law found in the 1933 session acts at page 340 and following. In the spring of 1935 a budget was made up for this county as required by the budget law. A certain sum was set aside in that budget for the payment of criminal costs under Class two as defined under section 2 of this act. The sum set aside for the payment of criminal costs has been exhausted, though the total amount allotted to Class 2 is not exhausted, though nearly so. The budget of this county was fixed as high as possible to come within the total estimated revenue for the county.

"The County Court is considering the refusal to write any more warrants for criminal costs during 1935, on the grounds that the members of the

court and other officials having anything to do with the drawing of such warrants would be personally liable for the amount of the warrants issued in excess of the amount allocated to criminal costs in the budget. This position is based on the penalty provision in section 8 and a doubt on the part of some of the members of the court as to whether the penalty provided in section 20 could possibly be construed to apply to them.

* * *

There are no funds in Class 6 or anticipated funds in that class so that the provisions of Section 5 under Class 6 offer no solution."

Section 1 of the County Budget Act (Laws of Mo. 1933, p. 340) states that counties of a population of 50,000 inhabitants or less shall be governed exclusively by Sections 1 to 8 inclusive, of the Act. Section 9, of the Act, (Laws of Mo. 1933, p. 346) is as follows:

"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."

According to the terms of the above section, we are of the opinion that in counties of less than 50,000, the officers incur no liability for their acts under Section 20. The liability of officers in counties of less than 50,000 inhabitants is under Section 8 of the Act, 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."

The purpose of the County Budget Act is to promote efficiency and economy in county government. Under Section 1 the county court shall classify proposed expenditures according to the classification provided in Section 2, and priority of payment must be adequately provided according to the classification, and the priority must be sacredly preserved.

From the facts as contained in your letter it appears that the county court has carried out its duties and so classified its expenditures, allotting Class 2 the amount which, in the court's judgment, it deemed necessary for the fiscal year, which included costs in criminal cases when properly chargeable to the county. When the court has carried out its duty in this respect and the priority of payment of various classes is preserved, then the court has done its duty and incurred no liability under the penalty section above quoted. Being human, the court cannot estimate in each of the classes the exact amount that will be needed or expended. Once an amount is decided on as an estimate, it is the duty of all the officers participating in the issuance of warrants to sacredly preserve the amount so set aside and estimated and to preserve the priority of payment; this, it appears from your letter, the county court has done.

The new County Budget Act did not undermine completely the former financial structure of the county. Under Section 22 of the Act only three sections were expressly repealed, i.e., Sections 9874, 9985 and 9986, R.S. Mo. 1929, and they are repealed only insofar as they conflict.

We assume that your county court hesitates to order the issuance of any warrants over and above the amount contained in the estimate for Class 2. This, we think the county court can do without incurring liability under Section 8. It is evident the Legislature was mindful that the estimates could not be made with an absolute degree of accuracy; hence, under Section 4, (Laws of Mo. 1933, p. 343) we find the following:

Sept. 20, 1935.

"Less outstanding warrants for preceding years as follows (list total by years)

"Less all known lawful obligations against the county December 31, last, and for which warrants were not drawn at that date * * * *;

"Total unpaid obligations of the county on January 1st of current year. (This shall include unpaid warrants and outstanding bills for which warrants may issue); * * * *"

Merely as a suggestion, we remind you that funds at the close of the fiscal year may be transferred under Sections 12167 and 12168, R.S. Mo. 1929; therefore, you may make up the deficiency in Class 2 from a surplus in some of the other classes if any such surplus exists at the close of the year.

As a further suggestion (which should be followed with extreme caution), it is possible that if it can be determined with absolute certainty that a surplus now exists in some of the classes below Class 2, and will exist at the close of the year, then the county court may, at its own peril, use such funds. In no event, however, do we suggest that any of the funds in Class 1 be so used.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

JWH:AH