

COUNTY BUDGET ACT: County Court may transfer surplus in any one of the five classes to some other class in need of same at the close of fiscal year

COUNTY COURT: It is duty of county court under Sec. 12162, R.S. 1929 to take whatever action it deems proper in regard to audit made by State Auditor of county offices.

CIRCUIT CLERK: Additional salary due Circuit Clerk, as shown by audit, for 1932-33-34 can only be paid from income of those years, from back taxes collected for those years, or from surplus remaining at close of fiscal year.

November 22, 1935.

Honorable H.J. Simmons,
Prosecuting Attorney,
Vernon County,
Nevada, Missouri.



Dear Sir:

This department is in receipt of your recent letter requesting an opinion as to the following:

I

"This county will have a surplus of funds in Classes 1 and 4 at the end of the year and a shortage in Class 3. This county owes outstanding, protested warrants of prior years. 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.

"Will you kindly advise whether under the sections 12167 and 12168 the surplus in classes 1 and 4 may be transferred to Class 3 or any other class which is in need of funds at the end of the year or whether the balance in those classes should be transferred to Class 6 to apply on outstanding, protested warrants of prior years."

The County Budget Act, Section 2 (Laws of Mo. 1933, page 341) divides proposed expenditures of the county for the fiscal year into 6 different classes, 5 of which are definite in their terms, and each class has priority over each succeeding class, and such priority must be sacredly preserved.

Sections 12167 and 12168, R.S. Mo. 1929, relating to the transfer of funds after the purposes for which they were

appropriated have been satisfied, have been on our statute books for a number of years, and we know of no reason why they cannot be applied to the County Budget Act. The County Budget Act did not repeal in its entirety the old financial structure which has long existed in our counties and enact new laws in lieu thereof. The only sections which are expressly repealed are Sections 9874, 9985 and 9986, R.S. Mo. 1929, and those sections only insofar as they conflict.

We can discern no conflict in the County Budget Act and Sections 12167 and 12168, R.S. Mo. 1929; therefore, we are of the opinion that if a balance remain in Classes 1 and 4 and the priorities of payment have been preserved, such surplus may be transferred to Class 3 if there be a shortage in said class, or such surplus may be transferred to any other class which may be in need of same, with the exception of Class 6.

We are further of the opinion that no surplus should be transferred to Class 6 until all of the five prior classes, which might be in need of such funds, have been taken care of.

II

"The report filed by the State Auditor in this county in compliance with sections 11478 and 11479 of the Session Acts of 1933 shows an excess fee retention by the County Clerk of \$2349.29; excess salary of the Prosecuting Attorney for the term of 1931-1932 to be \$541.72; excess salary retention of the County Superintendent of Schools from March 13, 1934 to December 31, 1934 is \$120.84; and salary due the Circuit Clerk of Vernon County to be \$1458.38.

"The County Court has asked that I get an opinion from you as to what steps they should take in collecting the excess Attorney and County Superintendent of Schools and whether it is mandatory under the Budget Act for the County Court to take any action in the matter."

Under Section 12162, R.S. Mo. 1929 the county court is authorized to enforce the collection of money due the county in settling claims, the pertinent part of which is as follows:

"The county court shall have power to audit, adjust and settle all

accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; * * * * "

Therefore, if the county court believes that any officer of the county owes the county certain sums of money, it is its duty to turn the matter over to the Prosecuting Attorney and direct that, after investigation by said Prosecuting Attorney, suit be instituted and prosecuted to final judgment, and if the county court so desires, it may employ other attorneys. State v. Fulks, 296 Mo. 634. There is no action required under the County Budget Act.

III

"Also advise whether the \$1458.38 that is due the Circuit Clerk can legally be paid out of Class 4 of the budget for the year of 1935 when the amount due him is for the years 1932-33-34."

It is the opinion of this department that the excess salary (\$1458.38) due the Circuit Clerk cannot legally be paid out of the funds in Class 4 for the year 1935. This department recently rendered an opinion to Honorable Percy W. Gullie, Prosecuting Attorney of Oregon County bearing on this question, copy of which is enclosed herewith, which we believe properly answers your third question.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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