

COUNTY BUDGET LAW: Revenue of 1934 cannot be used for payment of interest on warrants issued prior thereto; if surplus remains after all obligations have been taken care of, or if revenue is derived from delinquent taxes, the same may be applied on interest of protested warrants.

2-4
January 29, 1935.



Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

Some time ago you requested of this department an opinion based on the following facts:

"Under the County Budget Law passed by the last session of the legislature, it is provided that the County Court shall classify all money into six classes.

Where a county has outstanding protested warrants, can any part of the revenue for 1934 be used to pay interest on protested warrants issued prior to 1934, before the current expenses of 1934 have been taken care of?"

At the outset we are confronted with the question of whether or not the revenue of one year may be used to pay obligations of a preceding year. In other words, can the revenue of 1934 be used by a county to pay the interest on protested warrants issued in 1933 or prior to 1934?

In the case of State ex rel. v. Allison, 155 Mo., 1.c. 329, the Court said:

"And the respondent is correct in the second proposition advanced in its brief, viz: the revenue provided for any one fiscal year must be first applied to the payment of the

ordinary and usual expenses incurred in conducting the necessary business of the county for that year. It was so expressly decided by this court in Andrew Co. ex rel. v. Schell, 135 Mo.31. Therefore as to \$22,000 of the \$32,000 of outstanding county warrants, they afforded no reason for the non-payment of the relator's warrants and with reference to the remaining \$10,000 of those warrants they also were no answer to the relator's demand, if the relator is right in his contention that the fiscal year for the county began May 1, 1895, but if the fiscal year for the county began January 1, 1895, then the relator's warrants must wait on the payment of those issued, presented and registered before May 1 of that year. The sole question then is when does the fiscal year for the county begin? That question has already since the judgment of the circuit court in this case, been answered by this court in two decisions. Wilson v. Knox County, 132 Mo. 387, and State ex rel. v. Appleby, 136 Mo. 408. But respondent asks us to review the subject again, and we will not refuse to do so in the light of the earnest argument in that behalf."

Again, in the case of Kansas City, Fort Scott & Memphis Railroad Company v. Thornton, 152 Mo. 570, it was the opinion of the court that the revenues for any one year must be applied to the payment of the current expenses of the county for that year, and only the surplus after these have been paid can be used to pay the warrants issued in some other year.

In the case of Trask v. Livingston County, 210 Mo. 582, the court, in substance, said:

"The Constitution in declaring that 'no county shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year', and the statutes in forbidding the doing of

anything 'towards building the bridge after the letting thereof, until an appropriation for the same shall first be made by the county court', mean that the county becomes indebted for the bridge when the contract therefor is made, and that the appropriation to pay for the same must be made out of the revenue for that year and do not mean that the bridge can be paid for by an appropriation out of the revenue for the next year, even though the bridge is finished the next year. The date of the county's indebtedness, under the Bridge Act, if valid at all, is the year in which the contract is made, and not the next year when the bridge is completed and accepted and warrants issued to pay for it."

CONCLUSION

In view of the foregoing decisions, it is the opinion of this department that the revenue of 1934 cannot be used to pay interest on warrants issued prior thereto, but if any surplus remains after all obligations have been taken care of, or if revenue is derived from delinquent taxes, the same may be applied on the interest of the protested warrants in question.

Respectfully submitted,

OLLIVER W. NOLAN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

OWN: AH