

WARRANTS: The warrants in question cannot be paid out of the revenue of 1935.

February 13, 1935. 2-16



Hon. R. A. Starling,
Prosecuting Attorney,
Miller County,
Tuscumbia, Missouri.

Dear Sir:

This department has received your letter of January 23rd, containing the following request:

"I would appreciate an opinion on the following matter:

"In October 1933 the county court of this county issued warrants on the general road fund of the county in the amount of \$3,062 in payment of right of way for farm to market road much of which was located in a special road district. At the time the warrants were issued there was little or no money in this general road fund and the amount so issued was far in excess of the revenue provided for that fund for that year. Money did not come into the fund for the payment of the warrants for that year and on March 9th, 1934 more warrants were issued in the amount of \$3,062.00 to take up these old warrants. This amount was again far in excess of the revenue provided for the general road fund for the year 1934. The warrants have not yet been paid. I should like to know if the court can put this amount in this year's budget and pay these warrants out of the revenue provided for this year. If so, in what class of the 1933 budget law does this come.

"Further does Sec. 8131, R. S. 1929 give the county court the right to purchase right of way for "farm to market" roads or state highway out of general road funds of the county when such right of way is located in a special road district or are they limited to purchase of same outside of the special road district. I am asking this because it appears that under the budget law above referred to class three is the only class provided for road moneys and that is restricted to use outside of the special road district."

I.

Under Section 4, Page 343, Laws of Missouri, 1933, entitled County Budget Act, it is the duty of the county clerk not later than the first day of February of each year to prepare certain data. This section contains the following paragraph:

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

In the decision of the case of Kansas City, Fort Scott & Memphis Railroad Company v. Thornton, 152 Mo. l.c. 575, the court, in speaking on the question of using the revenue for a current year to take care of a deficit of a previous year, said:

"If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, only the surplus of revenue collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debt of a previous year. The intended effect of all which is to abolish the credit system and to establish a cash system in public business."

Relating to the funds out of which warrants, such as mentioned in your letter, may be paid, the court said in the case of State ex rel. v. Johnson, 162 Mo. l.c. 621:

"A county warrant valid when issued is not rendered invalid because the revenue provided to pay it is not collected during the year in which it was issued, or is misappropriated by the officers of the county for whose act the holder of the warrant is not responsible. On the contrary, the surplus county revenue remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected, may be used in the payment of outstanding valid unpaid county warrants for previous years."

A further decision bearing on the matter is that of the case of *Trask v. Livingston County*, 210 Mo. l.c.599, in which the court said:

"But confining ourselves to the facts in evidence and the statute governing the building of bridges, as already said the statute required the county court to make an appropriation before the Road and Bridge Commissioner let the contract. The record shows that the county court on the 5th of September, 1889, made an appropriation to pay for the building of the bridges. Now, out of what revenue was it authorized to make this appropriation, that of 1889 or that of 1890? We think the Constitution answers this question: they could only make it out of the revenue of 1889, and in this particular case this conclusion is reinforced by the fact that the bridges contracted for were to be completed in the year 1889, and as the obligation was incurred in 1889 and the bridges were to be built in that year and the appropriation was made in that year, we think there can be no escape from the conclusion that the indebtedness thereby created was a charge against the revenues provided for the year 1889, and not the revenues of 1890. Clearly the county court was not authorized to appropriate revenues which were to be derived from taxation in the year 1890, when such taxes had never been assessed, levied or collected. While the county court may in any one year draw warrants, after the revenue has been provided and the taxes levied within the scope of the levy and income for such year, it is too plain for argument that the Constitution forbids the anticipation of the revenues of any subsequent years; If not, all that has been said in regard to the force and effect of section 12 of article 10 of the Constitution to the effect that its purpose was to put counties upon a cash system instead of the old credit plan, has been in vain."

The County Budget Act, for the purpose of permitting efficiency and economy in county government, qualified the expenditures and funds of the counties with a population of less than fifty thousand inhabitants into six classes, making each class a priority over the succeeding class, with the exception of classes five and six, designating specifically the purpose of the fund to be set aside and apportioned.

Class six contains the provision "that if there be outstanding warrants constituting legal obligations, such warrants shall be paid before any expenditure", as authorized under Class Six.

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CONCLUSION.

It is the opinion of this department that the warrants in question may be paid out of Class Six, if any funds remain in that class, after the priorities are adequately and sacredly preserved in the other five classes, or if at any time during the course of the year there can be determined with any degree of safety a surplus will result in any of the prior classes, said surplus may be used, provided it does not jeopardize the priorities in the other classes. In other words, as was said in *Bank v. Johnson*, quoted *supra*, the surplus county revenue remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected may be used in the payment of outstanding valid unpaid county warrants for the previous years, and, of course, the delinquent taxes from the road funds of prior years may be used towards paying the warrants.

II.

Regarding the question of the county court's right to pay for right-of-ways for farm to market roads when located in special road districts, this department rendered an opinion bearing on this question to Hon. C. R. Marsden, Hillsboro, Missouri, a copy of which is herewith enclosed, and we believe that the same properly answers the inquiry contained in Paragraph 2 of your letter.

Respectfully submitted,

OLLIVER W. HOLEN,
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APPROVED:

Roy McKITTRICK
Attorney-General

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