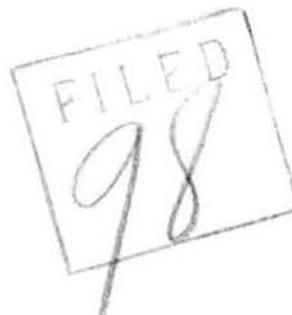


PROBATE COURT: Probate Judge is within his rights in purchasing filing cabinets, etc. provided same can be classified as "other necessities;" but the expenditure must receive approval of county court as set forth in County Budget Act.

5-10

April 17, 1935.



Hon. S.F. Wier,
Judge of Probate Court,
Atchison County,
Rock Port, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of March 30 requesting an opinion regarding certain supplies for your office, the full contents of your letter being as follows:

"Under the law as it formerly existed the county officers, including the probate judge, were permitted to order their own office supplies and equipment and submit the bill therefor to the county court for payment.

Since the enactment of the county budget law as found on page 340, et seq., there is a question whether or not a probate judge, or any other officer, can now, of his own volition, order his supplies and equipment and submit the bill therefor to the county court for payment.

This office, within the time required by law, submitted its estimate to the county court under said budget law for certain office equipment. The county court of Atchison County, upon consideration of the matter, struck such estimate and demand for office equipment from the list of demands made by the probate court of said county.

Please advise me (1) whether, as probate judge of Atchison County, I can order my own filing cabinets and equipment (which are now, and have for a long time past been necessary) for the office of probate judge and submit the bill to the county court of Atchison County for payment; or whether

I am compelled by the said county budget law to request said supplies, by estimate, under the provisions of said act. (2) Did the county court of Atchison County, Missouri, have the power to strike from the estimates submitted by the probate court of this county its requisition for filing cabinets and fixtures, and totally disregard the same?

At the present time, and for a long time past, the probate court of this county has had to file its valuable records and books in wooden shelves in the vault provided for that purpose. It is imperative that the wooden shelves be supplanted by steel fixtures for the purpose of filing such records. Also, the vault is considered fire proof, however, a fire would, in my opinion, be disastrous to the records of this court on account of said wooden fixtures. Furthermore, the filing space is so inadequate that more than one hundred cases are piled upon the floor in said vault."

Your first inquiry deals with the question of purchasing filing cabinets and equipment for your office as Probate Judge of Atchison County, and your second question deals with the right of the county court to strike these items from your estimate. The conclusion of this opinion will be a manifest conflict in the answers to the two questions; we shall therefore treat them under separate headings.

I

The authority of the Probate Court to purchase such furniture as you mention in your letter is found in Section 2056, R.S. Mo. 1929, which provides:

"Every probate court shall have a seal of office, of some suitable device, the expense of which, and the necessary expense incurred by said court for books, stationery, furniture, fuel and other necessaries, shall be paid by the county."

The leading decision as to the rights of a probate judge in purchasing furniture under this section is that of Gammon v. Lafayette County, 79 Mo. l.c. 226, wherein the Court said:

"With respect to the other and only remaining question, section 1184 provides (and the law was the same when the furniture was purchased) that 'every probate court shall have a seal * * * the expense of which and the necessary expenses incurred by said court for books, stationery, furniture, etc. shall be paid by the county.' These necessary articles are to be procured by the probate judge, and he is not required first to get an order of the county court for their purchase. Whether the furniture in question was necessary for the office, was properly submitted to the jury, who found that it was. The County court refused to allow the account to the furniture dealers, and plaintiff paid it; and while it may be conceded that the Winklers could not have maintained a suit against plaintiff for the price of the furniture furnished for the county, yet the statute requires the county to pay for it, and it can make no difference that in the first instance it is paid for by the probate judge. If, for instance, he should need for his office, in vacation of court, a load of fuel and could not procure it, but by payment for it on delivery, must he freeze in the office or close its doors, or furnish the fuel at his own expense? We are not inclined to give the statute so narrow a construction."

Another pointed decision is that of Saylor v. Nodaway County, 159 Mo., l.c. 524-525, wherein the Court said:

"By the same rule of interpretation the judgment of the circuit court herein must be reversed, for in this case it was agreed at the trial, that the stamps, for which the probate judge presented his bill to the county court for allowance, were used in the discharge of the official business of his office and that they were necessarily required in the performance of his official duty. While everything that an official may use to facilitate him in the accomplishment of the work he is directed by law to perform, may not be said to fall within the meaning of the term 'all other necessaries', as used in section 1726, supra, certainly everything that he is directed to use, or that must necessarily be used in the performance of a designated act or acts required to be performed by him, should be held to be included within the meaning of that term, unless something previously or subsequently used in the section or act so providing, should clearly indicate a contrary intention.

To suggest that an officer is oftentimes called upon, and may be compelled, to perform certain services for which no compensation has been provided, and for which he can collect nothing is no answer to the proposition that an officer should not be compelled to directly contribute his own means for the public welfare without recompense."

All of the early authorities dealing with the question of an officer's right to purchase supplies for his office are contained in the decision of *Ewing v. Vernon County*, 216 Mo., 681. Reviewing the decision, the Court concludes in the following language:

"Finally, we shall assume that among civilized people approved advances and results in scientific research make janitor services in public offices (i.e., the prevention of the propagation and spread of disease from filth), a necessity, and that the Legislature knew and gave effect to that fact. Buildings, under Revised Statutes 1899, section 6710, for clerks' and recorders' offices, being for the preservation of the records of the county, how could this main idea have effect if those records are not to be kept and preserved free from deterioration from filth? Is the general public not interested in and benefited by clean windows, clean floors, clean furniture, clean spittoons, heat in winter and wholesome, healthy air at all times in public offices? It is useless to argue that question. It answers itself. And if the county court, as the agent of the general public in county affairs, without legal right or excuse, refuses to do that duty in the recorder's office, what is the recorder to do? His only sensible course is to do what this recorder did, viz., avoid an unseemly wrangle, pay it out of his own pocket and trust to the courts and the law to reimburse him. The judgment on the first count is affirmed."

Conclusion

In view of these decisions, we would unhesitatingly hold that you would be within your rights in purchasing certain filing cabinets and equipment, provided same could be classified as "other necessities" as contemplated by the statute; however, there appears to be a conflict between the decisions quoted, the statute and the new County Budget Act passed by the Legislature in 1933.

A discussion of the County Budget Act in its applicability to the supplies in question will next be considered in answer to your question as to whether or not the county court has the power to strike the same from your estimate.

II

It was the purpose of the Legislature in passing the County Budget Act to promote efficiency and economy in county government. There are certain provisions of the Act which we shall consider as pertinent to your second question. Section 1, Laws of Missouri 1933, page 341 contains the sentence: "The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1 and ending December 31." The last sentence in said section is, "The county court shall 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."

Class 4 of the County Budget Act, Laws of Mo. 1933, p. 341 relates to the salaries of county officials and lists the supplies which can be placed in said class, definitely excluding equipment of the nature mentioned in your letter; however, the last sentence of said class says:

"Furniture, office machines
and equipment of whatever kind
shall be listed under class
six."

Class 6, being the last of the classes, is not definite as to the use of the funds which may be expended therefrom, being more or less of a hodgepodge class. Said section states:

"After having provided for the
five classes of expenses hereto-
fore specified, the county court
may expend any balance for any
lawful purpose."

Section 3 of the County Budget Act, Laws of Mo. 1933, page 342, sets forth the manner in which the various officers shall make their requests for salary and office supplies, and contains the following:

"* * * also, he shall submit an
itemized statement of the supplies
he will require for his office,
separating those which are payable
under class 4 and class 6. * * *"

After the officers have made their requests in the form set forth in Section 7 of the County Budget Act, page 345, Section 8, same page, provides that the County Court may amend and revise the estimates so made. It provides:

"* * * The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard, but the county court shall have no power to reduce the amounts required to be set aside for classes 1 and 3 below that provided for herein. * * * "

There appears to be no appeal or alternative for the officer if his estimate is not allowed in toto. The allowing of same appears to be purely a discretionary or almost arbitrary power of the County Court.

Conclusion

Section 22 of the County Budget Act, Laws of Mo. 1933, page 351 states: "All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed." In the first part of this opinion we concluded that you were entitled to purchase supplies as outlined in your letter and could compel the County Court to pay for same, taking for granted that such supplies were necessary and essential to the proper carrying out of your duties as Probate Judge, but by the terms of the Budget Act, the payment for the "necessaries" and supplies is under the power and discretion of the county court; hence, it would be necessary for such supplies to receive the approval of the county court in the manner as set forth in the County Budget Act.

If the County Court could not control the expenditures and retain them within the anticipated revenue, it would be of no force or effect and the whole purpose of the Act would be defeated and it is for this reason that we conclude that the purchase of the supplies in question should receive the approval of the County Court.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General