

COUNTY BUDGET ACT: County Treasurer should apportion funds turned over to him monthly by the collector according to the six classes and in such a manner that the priority of payment of each class over each succeeding class may be sacredly preserved.

June 14, 1935.

6-15



Hon. Carl E. Williamson,  
Prosecuting Attorney,  
Ripley County,  
Doniphan, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following matter:

"Under the present budget law, how should a county treasurer apportion the funds which he receives each month from the county collector?"

By the terms of Section 22 of the County Budget Act (Laws of Mo. 1933, p. 351) certain sections, insofar as they conflict with the Budget Act, are repealed.

Section 9927, R.S. Mo. 1929 relates to the duty of the county collector in compiling monthly statements of collections and the payment thereof to the county treasurer, and provides as follows:

"Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the state auditor,

who shall keep an account of the state taxes with the collector."

We cannot discern any conflict between Sec. 9927, supra, and the terms of the County Budget Act insofar as they relate to counties of a population of less than 50,000, under which Ripley County would be classified.

Section 9874, R.S. Mo. 1929 relates to the appropriation, apportionment and subdivision of all the revenues collected or to be collected, and places the same in five separate classes. It is our opinion that this section is repealed in its entirety by Section 2 of the County Budget Act (Laws of Mo. 1933, page 341), which classifies the expenditures of the county into six classes and imposes on the county court the duty of sacredly preserving the priority of payment of the classes.

Section 9985, R.S. Mo. 1929 deals with the apportionment of the various funds and the duties of the treasurer with respect to warrants, and is as follows:

"The county courts of the various counties in this state are hereby authorized and empowered, at the first regular term of said court after taking effect of this chapter, and at the May term every year thereafter, to make an order and cause the same to be spread upon the records of such court, setting apart, appropriating, apportioning and subdividing the revenues of any county for county purposes, as the same is set forth and specified in sections 9874 and 9875, and when the order shall thus be made and spread upon the records of any county in this state, the moneys so set apart, appropriated, apportioned and subdivided shall be held to be a sacred fund for the purpose for which it has been designated; and the county court thus making the order shall have no power to divert the same, or to permit the funds thus set apart to be drawn from the treasury of such county, except by warrants issued by order of such court on the respective

funds so set apart, and for the purposes in sections 9874 and 9875 specified and set forth: Provided, that nothing in this chapter shall be so construed as to authorize any county court in this state to make a levy for county purposes greater than that prescribed in section 11 of article X of the Constitution."

Section 9986, R.S. Mo. 1929 makes it the duty of the treasurer to separate and subdivide the revenue of the county as ordered in Section 9985, and is as follows:

"It shall be the duty of the county treasurer to separate and subdivide the revenues of such county in his hands, and as they come into his hands, in compliance with such order of court and the provisions of this chapter; and it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the court, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county court of each fund, which several funds shall be known and designated respectively as the pauper fund, road and bridge fund, fund for the payment of the salary of county officers, fund for the payment of fees of grand and petit jurors, judges and clerks of elections, and witnesses for the grand jury, and contingent fund; and no warrant shall be paid out of any other fund other than that upon which it has been drawn by order of the court as aforesaid. Any county treasurer or other county officer, who shall fail or refuse to perform the duties required of him or them under the provisions of this chapter, and in the express manner provided and directed, shall be guilty of a misdemeanor, and, upon conviction

thereof, shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, and in addition to such punishment, his office shall become vacant."

Bearing in mind that Section 22 of the County Budget Act repeals Sections 9985 and 9986, supra, insofar as they conflict with the terms thereof, it is the opinion of this department that the county funds, as they come into the hands of the county treasurer, should be apportioned according to the estimate as made by the county court under the terms of the Budget Act.

As stated above, Section 2 of the County Budget Act contains six separate classes and the estimate as contained in the budget should follow those classes and the amounts as set forth in the budget in each class should be sacredly preserved. It is the duty of the county treasurer to assist in the preservation of the priorities of the classes; Section 8 of the County Budget Act (Laws of Mo. 1933, p. 346) contains the following provision:

"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."

#### CONCLUSION

It will be noted that the Legislature did not make a radical departure in providing for the six classes and the different types of funds as contained in Secs. 9985 and 9986, and it is the opinion of this department that there is no direct conflict therein. The county treasurer may continue to follow the procedure as set forth in said sections except insofar as a fund contained in the old section is in direct conflict with the six classes of funds as contained in the County Budget Act.

The most striking change in the financial structure of the county brought about by the new Budget Act is the fact that the priority of payment of each class over each succeeding class as contained in Section 2 is mandatory on the county court, and likewise, the county treasurer; hence, it becomes the duty of the

county treasurer to keep funds in the various classes, or to so apportion the funds in the various classes, so that the priority of payment may be sacredly preserved.

If this be borne in mind by the county treasurer, he can classify the funds when delivered to him by the collector in such a manner that he will incur no official liability and at the same time prevent a large number of warrants from being protested in the succeeding classes while preserving the priorities of the preceding classes.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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

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