

COUNTY BUDGET ACT: County Court cannot permit Probate Judge to exceed amount provided in original budget estimate but if any funds are left in class 6, same may be used for purchasing additional books - clerical error may be corrected after estimate goes to State Auditor.

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Honorable Mark W. Wilson,
Prosecuting Attorney,
Henry County,
Clinton, Missouri.

Dear Sir:

This department is in receipt of your letter of August 17 requesting an opinion as to the following:

" * * * Last January, when the Probate Court made its budget, it sent in a budget for \$578.88, which the County Court saw fit to reduce to \$380.12, but did not call the Probate Court when they made the cut. Probate Judge later discussed this with the County Court and convinced them that it would be impossible to run his office on this amount. The Court then said they would take care of any expenses over the amount allowed. The budget was not raised before it was sent into the Auditor's Office and in fact the County Clerk made an error and sent the amount in as \$330.12.

"The Probate Judge has already spent the amount allowed by the court on the reduced budget and has a book ordered which will cost \$80.00. There will be other expenses in his office which will be expenses that should be allowed.

"If the County Court had allowed the amount the Probate Judge asked for, he would have had sufficient to pay his expenses.

"It is clear that the Probate Judge has

not been at fault as he asked for a sufficient amount to pay his expenses and was not given an opportunity to be heard after the Court reduced his budget. Can the amount be raised now that it is in the Auditor's Office with the County Court's consent? Will the Probate Judge be safe in ordering his necessary supplies? * * * * "

We assume that the County Court of Henry County carried out its duties according to the terms of the County Budget Act (Laws of Mo. 1933, pp. 340-351 inclusive), and in compiling the budget took into consideration the estimate of the Probate Judge under Class 4, which provides:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

Section 8 of the County Budget Act (Laws of Mo. 1933, p. 345) contains the following provision:

" * * * 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."

You state in your letter that the Probate Judge "was not given an opportunity to be heard after the Court reduced his budget", but it appears that the County Court orally promised to take care of the expenses of the Probate Judge over the amount allowed in the budget. We note that the County Court made no changes regarding the request of the Probate Judge and filed the estimate in accordance with Section 8 of the Act and forwarded a certified copy to the State Auditor.

We are of the opinion that any oral agreements made by the County Court and the Probate Judge affecting the estimate of the Office of Probate Judge would not be binding for the reason that once the estimate is compiled and filed according to the statute, the County Court would have no power to change or amend the same to conform to any oral or extraneous agreements. The County Budget Act contains no provision for amending or changing the estimate after it is filed.

As to the clerical error wherein the County Court reduced the amount of the estimate for the office of the Probate Judge from \$380.12 to \$330.12, we are of the opinion that this error may be corrected by the County Court, as this would not constitute a change or a correction in the budget, but an error in entering the figures. This error may be corrected so that the figures as contained in the budget will conform to the original estimate as made by the County Court. A copy of the corrected budget should be sent to the State Auditor.

CONCLUSION

It is the opinion of this department that the County Court cannot permit the Probate Judge to exceed the amount of the budget as originally estimated and filed, except for the clerical error as heretofore discussed, for the reason that it might subject the County Court and its officers to the liability contained in Section 8, i.e., "any order of the county court * * * directing the issuance of any warrant contrary to any provision of this act shall be void * * * and any county clerk * * * or other officer participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

We would suggest, however, that if there are any funds in Class 6 available after the five prior classes have been provided for, the same may be used for purchasing the record book and any other expenses of the office of Probate Judge.

We are of the opinion that at the close of the fiscal year, if there be a balance in any one of the classes which is

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no longer needed for the class, said funds may be used for the payment of the record book in question in the manner as provided in the Act.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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