

COUNTY COURTS: Not permitted to contract debts beyond the anticipated revenues for the year.

5/28

May 25, 1936.



Hon. C. Arthur Anderson
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

We are in receipt of your inquiry which is as follows:

"Does the law authorize the county court to purchase property on behalf of the county in a year when the county does not have the funds available that year to pay therefor, and when the issuance of a warrant in payment would be illegal, and then in the following year, by reason of the fact that the obligation was incurred the previous year, pay the same in a prior class to class six as defined by the Budget Act?"

Section 12 of Article X of the Missouri Constitution, in part, provides as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State 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, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose."

In the case of Holloway to use v. Howell County, 240 Mo. 601, the court, in discussing the authority of a county to go in debt, uses the following language, l. c. 613:

"The theory of our present system of county government is that counties must run their business affairs on the 'cash system'. * * * Running in debt is easy and pleasant while it lasts; paying is 'another story'. The pleasure of debt-making is denied by law to Missouri counties. They can anticipate their revenue, but only for the current year.

In the case of *Watson v. Kerr*, 279 S. W. 692, speaking on the same subject, the court said, l. c. 695:

"But in construing the constitutional provision just quoted we have repeatedly held that an indebtedness is not invalid merely because it appears at the end of the year in which it was created that the aggregate indebtedness incurred by the county during that year exceeded the revenue actually collected. If at the time of its creation the indebtedness is within the income which may reasonably be anticipated, it is valid."

In the case of *Hawkins v. Cox*, 334 Mo. 640, the court in speaking of this same constitutional provision, said, l. c. 649:

"The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year', but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where the court said: 'The contracting of a debt in the future by a county in any manner or for any purpose in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to

do so by the assent of two-thirds of the voters' is prohibited.

In the case of *Trask v. Livingston County*, 210 Mo. 582, l. c. 594, speaking about whether the indebtedness was created for the building of a bridge at the time of the letting of the contract, the court said:

"Hence, the indebtedness for these bridges was created, if at all, by a compliance with the law governing the letting and contracting for bridges already noted. When the county became indebted on these bridge contracts must be determined by the 'income and revenue provided for such year,' which under the Constitution must be looked to for the payment of such indebtedness and it was the 'income and revenue provided' for the year 1889, which the county court was authorized to appropriate for that purpose, and not the revenue for the year 1890, which at the date of the contract for the building of said bridges had never been assessed, levied or collected."

The Supreme Court in construing the above constitutional provision has, we think, clearly held that a county cannot in a given year create a debt against the county revenues in excess of the revenues on hand and the reasonable anticipated revenues for that year, and in the case of *Barnard & Company v. Knox County*, 105 Mo. 382, in holding a contract which went beyond this limit void, the court said, l. c. 390:

"It is, of course a hardship to the plaintiff to declare this warrant worthless, but we cannot dispose of the question on any such surface view of the matter. The Constitution seeks to protect the citizen and taxpayer and their rights are not to be overlooked. It is the duty of persons dealing with counties and county officials, as well as of county officials themselves to take notice of the limit prescribed by

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the Constitution. * * * Soliciting agents, contractors and others who deal with county officials must see to it that the limit of county indebtedness is not exceeded, and if they fail to do this they must suffer the consequences. Unless this is so, there is an end to all effort to bring about an economical and honest administration of county affairs."

In 1933 (Laws of Missouri, 1933, page 340) the County Budget Law was passed. The first eight sections thereof apply to counties having a population of over 50,000, and we understand St. Louis County to have more than 50,000 population.

Section 1 requires the county court, at the February Term, to file a budget of estimated receipts and expenditures for the year January 1 to December 31, and

"the receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year.*
* * "

The county court shall classify proposed expenditures as set out in Section 3, thereof, which provides for six classifications.

Section 5 requires the county court to show the estimated expenditures for the year for each of the various classes, and in defining class six provides in part:

"No expense may be incurred in this class until all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any

warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest. Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid."

It appears to be clear that the county court has no authority to purchase goods for the county under the provisions of class six of the Budget Law "if any warrant drawn will go to protest". It is likewise plain that no warrant may be issued in payment of any bill falling in class six unless there is an actual cash balance in the county treasury to pay all prior classes for the current year, and also to pay any warrant previously issued on class six. If the budget money as theretofore set out for payment of classes prior to class six is exhausted before the end of the year and a valid claim in a class prior to class six arises, warrants may be drawn on anticipated funds in class six, and such anticipated funds in class six are thereupon treated as part of such prior funds. The law does not justify the issuance of a warrant nor the agreement to be made by the county to purchase goods in class six if there are any outstanding lawful warrants unpaid for any prior year. No expense is justified nor may it be incurred for the purposes contemplated by class six until all the other classes have been provided for.

Section 2, class six, Laws of Missouri, 1933, page 342, provides:

"* * * that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

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The question then arises, what are "outstanding warrants constituting legal obligations"?

The first four classes of the Budget Law, Section 2 thereof, appear to be well defined and no question will likely arise as to what expenses fall within any of them. Class five thereof may not consist of more than one-fifth of the anticipated revenue, and the law contemplates that the class five money may be expended for contingent, emergency and incidental county expenses, including expense of paupers not otherwise classified. Nothing from this class may be expended for personal service estimated for in any of the prior four classes.

Section 8 of said Budget Law provides that:

"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."

It will be seen that the plain and necessary meaning of the Budget Law is to conduct the county business on the "pay as you go" basis. The county court must get a clear picture in February of the needs and financial ability of the county for that year. They must get the estimates thereof and are required to go over the same and make thorough examination, and if in their judgment the same should be revised, they are required to revise them. The priorities of classifications set forth by the Legislature "shall be sacredly preserved", said the law-making body.

Section 8 provides that the county treasurer shall remain inactive as to payment of warrants, awaiting the filing of such budget estimate. Prior to its being filed, he is prohibited from paying or protesting warrants for the current year. It will be noted that he is not thereby prohibited from paying warrants that were lawfully issued for accounts due for prior years which are lawfully

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payable out of funds for prior years that are on hand. This means that a warrant for the previous year had legally been issued, but the holder had not presented it for payment in the year it was issued, and if the funds were on hand the year it was issued and are on hand when it is presented for payment the subsequent year, the county treasurer is authorized to pay it notwithstanding the budget estimate has not been filed. This is the one exception to complete inactivity on the part of the county treasurer in payment of county warrants prior to filing of the budget estimate.

It appears that the said budget law contemplates that the public funds of the county must reasonably appear to be available during the year to pay for any article purchased by the county during that year. If the county could purchase an article during the year when the funds to pay for it are not available, and it does not appear reasonably certain that such sufficient funds would be available during the year to pay therefor, then the county court would not be keeping either the letter or spirit of the budget law, which commands that "such priority shall be sacredly preserved", and the warrant would not be legally issued and would not be an "outstanding warrant constituting a legal obligation". We find nothing in the budget law which gives precedence in payment to a bill incurred in a previous year on account of that fact.

CONCLUSION.

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It is our opinion that the constitutional provision above quoted limiting the authority of contracting county indebtedness makes invalid any contracts of purchase entered into by the county court on behalf of the county when the members of said court do not in good faith believe and have reasonable grounds to believe that the funds are or will be available during the current year to pay such bill as well as all other bills for that year.

Yours very truly

APPROVED:

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(Acting) Attorney General.

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