

COUNTY BUDGET ACT: When anticipated revenue is exhausted, no more warrants should be issued.

11-17
November 16, 1936.



Honorable Paul N. Chitwood,
Prosecuting Attorney,
Reynolds County,
Ellington, Missouri.

Dear Sir:

This department is in receipt of your letter of November 9, wherein you request an opinion as to the following condition which has arisen in your county:

"It appears that there are insufficient funds of the revenue of Reynolds County of which to pay off warrants issued and to be issued on particular funds at this time.

"The various appropriations made by the county court of this county in accordance with the County Budget Law of 1933, have been exhausted and no more funds are available in such funds with which to pay off additional warrants which might be issued for the remainder of this year.

"I have advised the county court that no more warrants should be allowed to be issued for remainder of this year in view of the depleted finances of the county; although I have been unable to find any decisions to sustain my position. I shall be pleased to have your opinion on the point in question. I do not believe that any more county warrants will be issued; but of course, I want to be absolutely certain about the matter."

In the caption of your letter it appears that your question refers mainly to the particular fund being exhausted under the County Budget Act, while it appears from your letter proper that the entire funds of your county in every class have been exhausted, and in view of the fact you have advised the County Court that no more warrants should be issued on any class due to the depleted financial condition of the county, we shall treat your inquiry from the angle that all funds are now exhausted.

The County Budget Act (Laws of Mo. 1933, p. 340 et seq.) makes it the primary duty of the county court, at the regular February Term thereof, to estimate and classify proposed expenditures for the year into five classes and to sacredly preserve the priorities of the classes therein named, the sixth class being indefinite in its terms, contemplated to provide for any excess funds which might remain after provision has been made for the five prior classes.

Under Section 4 of the Act (p. 343) under "Estimated Receipts" there is the following provision:

"Estimate from taxes for ordinary revenue for current year.

* * *

"Total estimated county revenue for the current year from all sources.

"Ten per cent shall be deducted from total for delinquent taxes to get the net amount estimated for purposes of budget.

"The court must balance its estimated budget for the year for the first five classes on the net estimate. * * * * "

Under Article X, Section 12 of the Constitution, a county court is prohibited from becoming indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year.

In the case of *Watson v. Kerr*, 279 S.W. 692, it was held that if, at the time of the creation of an indebtedness it is within the income which may reasonably be anticipated, it is valid, and that mere errors in judgment in estimating whether indebtedness can be incurred and the total expenditures still kept within the income is not sufficient to impeach good faith of the county court, and that there must have been fraud or palpable attempt to evade Section 12, Article X of the Constitution. There are numerous other decisions to like effect.

The Watson v. Kerr Case further held that even though indebtedness of a county resulting from current expenditures during the year reached an amount at its close that at some time during the year it must have become apparent that indebtedness as a whole would exceed the income and be invalid within Article X, Section 12 of the Constitution, it cannot be held that the entire indebtedness, to the extent it was created by the county court, or that incurred through its action before such situation disclosed itself, was invalid.

The County Budget Act was enacted for the purpose of promoting efficiency and economy in county government; however, it did not destroy the former financial structure of the county, the principal change being to the effect that the five classes which formerly existed are now mandatory in that the priorities of payment must be sacredly preserved.

CONCLUSION

It is the opinion of this department that if your county court has issued warrants to the amount of the anticipated revenue as contained in the Budget Act, no further warrants should be issued, because as pointed out in the case of Watson v. Kerr, the same would be invalid if in excess of the anticipated revenue. We think it was the intention of the Legislature in enacting the Budget Act that county courts should not be permitted to issue warrants in excess of 90% of the anticipated revenue and that said warrants should come within the estimate as compiled and filed by the county court.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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