

COUNTY BUDGET ACT: The deficit in Class 2 relating to payment of jurors by script under Sections 8767 and 8765 may be paid out of excess funds existing at the close of the fiscal year in any other class, or may be paid out of surplus existing after all current expenses are paid, or from delinquent taxes.

July 15, 1936



Honorable Ellis W. Howlett
Circuit Clerk
Charlestown, Missouri

Dear Sir:

This Department acknowledges receipt of your request for an opinion of July 2. Your letter contains the following facts:

"In the Budget estimate for the year 1936 for Mississippi County we have a total of \$9,975.00 set up for class two expenditures. In class two the set up for Petit and Grand Juries is \$2500.00. The County clerk claims that there will be no surplus in any of the other subdivisions of class two. In accordance with Section 8765 R. S. Mo. 1929 I have issued jury script for the February term Petit Jury in the sum of \$1083.55 and for the February term Grand Jury in the sum of \$400.30 making a total of outstanding script issued against the \$2500.00 set up of \$1483.85. We have another term of Circuit Court during this month, being the regular July term, and the regular October term to come. After deducting the total script issued I now have only a balance of \$1016.15 for the two terms of Court. I may possibly get by the July term without issuing script in excess of the budget allotment, but am certain that I can not get by both terms of Court.

"Section 8765 R. S. Mo. 1929 reading as follows:-

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'Upon the demand of such juror, the clerk shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the County treasury' in so far as I can see was not repealed by the Budget Law of 1933.

"The last paragraph of Section 8 on page 346 of the Laws of 1933 reads as follows:-

'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.'

"Section 8767 R. S. Mo. 1929 states that scrip issued by the Circuit Clerk in accordance with Section 8765 shall be handled in the same manner and subject to the same rules as County warrants.

"In your opinion, would I or would I not be liable on my bond as Circuit Clerk if I issue jury scrip in excess of the \$2500.00 set up in the budget. "

The purpose of the Budget Act is to promote economy and efficiency in the business of the county. It did not necessarily change the complete financial structure of the county; the chief and foremost purpose was to divide the finances of the county into five different classes, each class to receive a priority over the succeeding class and the main burden on the county court and the other officers is to sacredly preserve the priorities. This we think to have been in the minds of the legislators in enacting paragraph two of Section 8 quoted in your letter.

Section 22 repeals all laws or parts of laws and ex-

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pressly sections 9874, 9985 and 9986 in so far as they conflict.

Sections 8765 and 8767, mentioned in your letter, are mentioned, approved and explained in the case of Scott v. Young 113 Mo. App. 46. We think there is no conflict between these sections and the new County Budget Act. Further, that the same were not repealed expressly or by implication.

Your question, in the last analysis, as to the effect of whether or not if you issue more script in the payment of jurors than you have funds in Class 2 of the Budget Act, are you liable on your official bond as mentioned in the second paragraph of Section 8, Laws of Missouri 1935, page 346. You state there will be no excess of funds in the other subdivisions of Class 2. Therefore, if there is a deficit it will have to be taken care of in some other manner. By way of suggestion, if, at the close of the fiscal year, there remains in any other class any surplus funds which will not be needed in Class 1, then we think such excess could be used for the deficit which you state will, in all probability, be in Class 2. We think that Sections 12167 and 12168, which refer to the transfer of county funds, are still operative and effective.

Under Section 4, page 343, it appears that the Legislature has anticipated such a condition as you present in listing the following:

"Less outstanding warrants for preceding years as follows (List total by years)

"Less all known lawful obligations against the county December 31, last, and for which warrants were not drawn at that date (itemized list of these obligations must be attached to the estimate)

"Total unpaid obligations of the county on January 1st of current year. (This shall include unpaid warrants and outstanding bills for which warrants may issue)."

However, we call your attention to the fact that such excess script or warrants should not, when totaled with all the

other expenditures, be more than the anticipated revenue for the current year, otherwise such excess would be invalid and violative of Section 12, Article X, of the Constitution of Missouri, which prohibits the county

"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 * * * *."

Pursuing the question further, and assuming that there will be no excess funds in any class, how can script issued by you in excess of the amount allotted in the budget be ultimately paid. Referring again to Section 4, under estimated receipts the county clerk is instructed to deduct ten per cent from the total amount of the anticipated or ordinary revenue, in order to arrive at the net amount estimated for purposes of the budget. This deduction is made for the purpose of taking into consideration delinquent taxes.

In the case of State ex rel. v. Johnson 162 Mo. 621, it was held as follows:

"A county warrant valid when issued is not rendered invalid because the revenue provided to pay it is not collected during the year in which it was issued, or is misappropriated by the officers of the county for whose act the holder of the warrant is not responsible. On the contrary, the surplus county revenue remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected, may be used in the payment of outstanding valid unpaid county warrants for previous years. (Overruling obiter dictum in State ex rel. v. Horstman, 149 Mo. 290.) "

Therefore, we are of the opinion that if no excess

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remains at the close of the fiscal year in any of the classes which might be used to take care of the deficit which you state will probably exist in Class 2, then the delinquent taxes or surplus from any source, after all other current expenses are paid, can be used to take care of said deficit.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

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