

COUNTY BUDGET ACT - At close of fiscal year the county court may transfer surplus funds and pay accounts arising during the year under Sec. 12167, R.S. Mo. 1929.

January 28, 1936.

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Honorable C.W. McKim,  
County Clerk,  
Worth County,  
Grant City, Mo.

Dear Sir:

This department is in receipt of your letter of January 22, wherein you make the following inquiry:

"In Worth County we have about \$157,000 indebtedness which is represented by warrants written from 1930 to 1933. In 1935 early in the year, in January, I think, all 1934 warrants were paid, leaving a balance in cash which was transferred to the Old County Revenue and Bridge Fund and then was used to pay off old warrants which I understand is according and in harmony with the County Budget Law. However, after the first of the year, in 1935, some old bills began to show up in the office here; I have never been sure just what to do with them. Now then at this present date we have the same thing happening along with the bills we had left over from 1934 we have some 1935 bills showing up. It is about the disposition of these that I am asking.

"Last year there was left in the budget something like \$500.00, that is for 1935. But it seems now there will be a cash balance for the year 1935 considerably larger than this amount. Now then we have perhaps \$1500.00 in bills that have showed up against 1935. Would it be legal to issue warrants to pay

these bills on the cash balance left over from 1935 revenue after all warrants that were issued in 1935 have been called and paid?

"We are making up our budget for 1936 at this time and I had the understanding that an old bill could be listed in the budget for the coming year and then be paid at the first pay day in February; however, if they could be issued against the cash balance before that balance is used to pay off old warrants, it would be more convenient to this office and to the county court. \* \* \*"

To state your question briefly and concisely, it is: Can the excess or surplus remaining after all classes under the County Budget Act have been adequately provided for and all outstanding warrants have been paid, be used to pay accounts which have arisen during the year 1935?

Section 4 of the County Budget Act (Laws of Mo. 1933, page 343), same relating to the duties of the county clerk, lists the following items:

"Cash balance in county revenue fund  
January 1 of current year;

"Net cash balance on hand January 1st  
of current year;"

and under the heading of "Estimated Receipts", lists the following:

"Cash on hand (as shown above) not  
obligated, January 1st of current  
year."

Bearing in mind that it is the duty of the county court at the regular February term to prepare and enter of record and file with the county treasurer and the State Auditor a budget of estimated receipts and expenditures for the year beginning January 1 and ending December 31 as provided in Sec. 1 of the County Budget Act (Laws of Mo. 1933, page 341), within the next ten days these acts must be performed by your county court.

We shall now discuss the unpaid bills for 1935. The Act, Section 2 (Laws of Mo. 1933, p. 341) provides for the classification of proposed expenditures and makes each class a priority over each succeeding class. The first five classes are definite in their purpose; the sixth class provides as follows (page 342):

"After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided, however, that the county court shall not incur any expense under Class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under Class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under Class 6."

*have* You state in your letter, "But it seems now there will be a cash balance for the year 1935 considerably larger than this amount", and "we gave perhaps \$1500.00 in bills that have showed up against 1935". You further state "all warrants issued in 1935 have been called and paid". Now, if this be true and all the five definite classes have been adequately provided for, their priorities sacredly preserved, it is our opinion that ordinarily the funds could be transferred to Class 6, provided there are no outstanding warrants. However, you state in your letter that Worth County has an indebtedness of about \$157,000 represented by warrants written from 1930 to 1933. Therefore, due to these outstanding warrants, we do not believe that you could pay the accounts from excess funds for the current year of 1935 by transferring the funds to Class 6.

We have construed Section 12167, R.S. Mo. 1929 not to be repealed by the County Budget Act; hence, it is further applicable to surplus funds, said section being as follows:

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

We assume that the \$1500, representing accounts for the year 1935, should have been classified among the five classes, if they had been taken into consideration at the time the budget was prepared for the year 1935. Your letter contains no explanation as to why or in what manner the bills totaling approximately \$1500 arose, or why the same were not anticipated as expenditures when the budget was prepared in February, 1935. Ordinarily the decision in the case of State ex rel. v. Johnson, 162 Mo. 621, would prevail and the surplus cash on hand used to take care of outstanding warrants of former years. In that case the court said (l.c. 631-632):

"This section then had been the law of this State for twenty years before the adoption of the Constitution of 1875. Prior to that, it was not necessary that a county warrant should be drawn upon a special fund or that it should come to the holder during the year in which the indebtedness was created. What, then, was the effect of the Constitution upon this section? As was ruled in Andrew County v. Schell, 135 Mo. 31, and State ex rel. v. Payne, 151 Mo. 670, that section was modified by the Constitution to the extent that thereafter the warrants drawn by the county court in any year to meet all the necessary and current expenses for that year must first be paid in full in the order of their registration, and if a surplus was left, then the section operated on all other warrants just as it had previous to the adoption of the Constitution of 1875. In a word, that section, in so far only as it conflicted with the provisions of section 12 of article 10 of the Constitution, became inoperative by force of the Constitution as soon as it went into effect because inconsistent therewith. But with this exception there is no such repugnancy as requires us to hold it was absolutely repealed, the rule of construction being that before it shall be construed as repealed by implication only, the two must be so repugnant that both can not stand, and, we think, with the modification we have mentioned, both can stand. Such has been the opinion of the Legislature, we think, from the fact that this section has been preserved through three revisions

since the adoption of the Constitution. We conclude that this surplus, after the current expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute, section 3166, Revised Statutes 1889, which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, provides the rule of priority, just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata."

#### CONCLUSION

We are of the opinion that the surplus cash which you now have on hand can be transferred, this being the close of the fiscal year, to any of the five classes under which the unpaid current accounts of 1935 can be legally classified, and that the surplus funds could be transferred to the various classes for payment of the same in accordance with Section 12167, supra. This conclusion, however, is on condition that all of the items composing the \$1500 current accounts occurred in 1935; otherwise, the decision in the case of State ex rel. v. Johnson, supra, would govern.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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