

COUNTY BUDGET ACT: Contracts arising in counties of more than 50,000 to be paid out of special road and bridge levy fund are required to be advertised or notices published under Sec. 19, Laws of Mo. 1933, p. 350 if amount is more than \$500.00.

2-20
February 20, 1936.



Honorable J. J. Wolfe,
Associate Prosecuting Attorney,
St. Louis County,
Clayton, Missouri.

Dear Sir:

This department is in receipt of your letter of February 8 wherein you make the following inquiry:

"Kindly advise whether or not in your opinion purchases for which payments are made out of the special road and bridge levy are required to be advertised or posted under the provisions of Section 19 of the County Budget Law of 1933.

"Materials, tools and equipment used in and on roads and bridges are many and varied and if purchased at opportune times when the prices are low or when certain dealers have a surplus, a great saving can be affected. If, however, we are required to advertise or post notices inviting bids, the time lost thereby and the opportunity of bidders to consult with each other may prevent our availing ourselves of these savings."

St. Louis County, having a greater population than 50,000, is governed by Sections 9 to 20 inclusive of the County Budget Act.

On January 21, 1936 this department rendered an opinion to Honorable O.A. Kamp, Prosecuting Attorney of Montgomery County, in which it was held that a special road and bridge fund did not become a component part of the six classifications as contained

in Section 2 of the County Budget Act, which relates to counties having less than 50,000 inhabitants. In counties of more than 50,000, the terms of the County Budget Act and the general financial set-up are not as definite as in counties containing less than 50,000 inhabitants. A copy of the opinion above referred to is hereto attached.

Section 19 of the Act (Laws of Mo. 1933, p. 350) is as follows:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment, or services other than personal made by the officer in charge of purchasing in any county having such officer.

"No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating; providing that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it shall be sufficient for the accounting officer to certify that such bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of such bonds yet to be sold or of such taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least 500 copies per issue, if

there be such, except that such advertising shall not be required in case of contracts or purchases involving an expenditure of less than \$500.00, in which case notice shall be posted on the bulletin board in the court house. All bids for any contract or purchase may be rejected and new bids advertised for.

"Contracts which provide that the person contracting with the county shall, during the term of the contract, furnish to the county at the price therein specified the supplies, materials, equipment, or services other than personal therein described, in such quantities as may be required, and from time to time as ordered by the officer in charge of purchasing during the term of the contract, need not bear the certification of the accounting officer as herein provided; but all orders for such supplies, materials, equipment, or services other than personal shall bear such certification. In case of such contract, no financial obligation shall accrue against the county until such supplies, materials, equipment or services other than personal are so ordered and such certificate furnished."

Section 7891, R.S. Mo. 1929 refers to the levying of a special road and bridge tax, and is as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county; provided, however, that all that part or portion

of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be: provided, further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road; provided, further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

We call your attention to the clause in Section 7891, supra, which says, "but for no other purposes whatever, and the same shall be known^{and} designated as 'the special road and bridge fund' of the county".

Section 10 of the County Budget Act (Laws of Mo. 1933, p. 346) throws some light on the question at hand in the provision:

"The annual budget of any such county shall present a complete financial plan for the ensuing budget year. It shall set forth

all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions; the actual or estimated operating deficits or surpluses from prior years; all interest and debt redemption changes during the year and expenditures for capital projects. In addition, the budget shall set forth in detail the anticipated income and other means of financing the proposed expenditures. * * *

Section 12 of the Budget Act (Laws of Mo. 1933, p. 348) provides for the contents of the budget for the county, as follows:

"The budget document shall include the following: (1) a budget message outlining the fiscal policy of the government for the budget year and describing the important features of the budget plan, giving a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between total proposed expenditures and total expected income and other means of financing the budget compared with the corresponding figures for the last completed fiscal year and the current fiscal year, and including explanatory schedules classifying expenditures by organization units, objects, and funds, and income by organization units, sources, and funds; (2) the detailed budget estimates, as provided for in the preceding section of this act, showing the recommendations of the budget officer compared with the figures for the last completed fiscal year and the estimates for the current fiscal year; (3) complete drafts of appropriation and revenue orders to put the budget into effect when approved by the county court.* * *"

Section 18 of the Act (Laws of Mo. 1933, page 350) provides:

"Except as in this section otherwise specified, all offices, departments, courts, institutions, commissions,

or other agency spending moneys of the county, shall perform the duties and observe the restrictions set forth in the preceding sections relating to budget procedure and appropriations. The estimates of the circuit court, including all activities thereof and of the circuit clerk, shall be transmitted to the budget officer by the circuit clerk. The estimates of the circuit clerk shall bear the approval of the circuit court. The budget officer of the county court shall not change the estimates of the circuit court or of the circuit clerk without the consent of the circuit court or the circuit clerk, respectively, but shall appropriate in the appropriation order the amounts estimated as originally submitted or as changed, with such consent."

Referring again to Sec. 10 of the Act (p. 346), we call your attention to this provision:

" * * * All receipts of the county for operation and maintenance shall be credited to the general fund, and all expenditures for such purposes shall be charged to such fund; provided, that receipts from the special tax levy for roads and bridges shall be kept in a special fund and expenditures for roads and bridges may be charged to such fund. * * *"

CONCLUSION

You will note from the enclosed copy of opinion to the Honorable O.A. Kamp that we held the special road and bridge fund was not to be taken into account in formulating the annual budget for counties of less than 50,000 inhabitants for the reason that the various sections were silent as to special tax levy and in view of the fact that Sec. 7891, supra, states specifically that the funds derived from such tax shall be placed to the credit of the "special road and bridge fund" and in addition thereto, none of the six classes were sufficiently broad in their terms to include the special road and bridge fund.

In the instant case the Legislature has seen fit to specifically mention the special road and bridge fund and has made it a part of the annual budget and directed how the fund shall be kept in counties of more than 50,000 population. We are therefore

of the opinion that the purchase of materials, tools and equipment as mentioned in your letter, is amenable to the terms of Section 19 of the County Budget Act, and if the amount involved in the contract is more than Five Hundred Dollars, it is necessary to advertise or post notices inviting bids.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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