

- COUNTY BUDGET ACT:
1. Any surplus remaining at close of fiscal year, may be used to pay outstanding valid county warrants for previous years.
 2. Warrants should be paid according to registration.
 3. Section 14 of County Budget Act applies to counties of more than 50,000 population.

March 1, 1937

3-9



Mr. Lee Barham
Circuit Clerk
Stoddard County
Bloomfield, Missouri

Dear Sir:

This Department is in receipt of your letter of February 17, wherein you propound certain questions relating to the County Budget Act for an opinion. Your questions are somewhat similar in nature. However, to make distinctions and to clarify the same we shall attempt to answer each question separately.

I.

Your first question is as follows:

"Any surpluses existing in any year since the effective date of the present Budget Law, can or cannot be applied or distributed to and on any outstanding warrants or obligations for any years previous to the enactment and effectiveness of the present Budget Law."

Assuming that you desire your questions answered solely for the purpose of the budget in your own county, we call your attention to the fact that the Budget Act presents two systems of procedure, the first eight sections governing counties of less than 50,000, the next twelve sections relate to counties over 50,000. Knowing your county to be less than 50,000 it is necessary that we confine our conclusions

to the first eight sections, pages 340 to 346, inclusive. It was the purpose of the county budget act to promote economy and efficiency in county government. By Section 22, page 351, Sections 9874, 9985 and 9986 were especially repealed, and all other sections, insofar as they might conflict, were repealed. In our interpretation of the budget act we have not treated it as abrogating and nullifying all of the sections of the Revised Statutes of 1929 pertaining to the financial structure of the county, but when said sections conflict with the budget act naturally the provisions of the budget act must take precedence and repeal any part of a section which is in conflict therewith.

By the terms of the County Budget Act, page 341 the expenditures of a county for the current year are placed in six different classes. The sixth class is as follows:

"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."

By the provisions of Class Six, as herein quoted, it is evident that the Legislature took

into consideration the fact that many counties, at the time the budget act became effective, would have outstanding warrants. The budget for any year is based on ninety per cent of the anticipated current revenue.

It was held in the case of State v. Johnson 162 Mo. 621, 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."

We are, therefore, of the opinion that any surplus existing in any year under the Budget Act can be applied to outstanding warrants for previous years.

II.

Your second question is:

Is it true in accordance with the Law that any surpluses emerged or carried forward from year to year preceding and including the year prior to the effective date of the

present Budget Law, be used and distributed, as the County Court may see fit, to the payment of outstanding warrants and obligations unpaid, in any of the years preceding and including the year prior to the effective date of the present Budget Law and that any surpluses in any year following and including the year succeeding the enactment and effective date of the present Budget Law be applied and used in the payment of outstanding warrants and unpaid obligations in the year in which said outstanding warrant or unpaid obligation accrued, or emerged and carried forward and distributed in the payment of outstanding warrants and unpaid obligations for any of the years, as the County Court may see fit, following and including the year succeeding the effective date of the present Budget Law of Missouri?"

Having come to the conclusion in the first question that any existing surplus at the close of the fiscal year under the budget act can be used for discharging obligations or outstanding warrants from the previous year, your second question would therefore relate to the power of the county court to discharge the obligations in any manner they see fit. The decision quoted supra, *State ex rel. v. Johnson*, is followed in the case of *Holloway v. Howell County* 240 Mo. 1. c. 612, as follows.

"The bill alleges that the share of the district is still in the county treasury, but the proof shows nothing of the sort. Whatever mere theory be indulged by way of inference, one way or the other, the actual

fact is, as shown by the proof, the money levied for county purposes was used for county purposes, presumably for paupers, insane persons, the salaries of officials, the expenses of running the courts, jury fees, expenses of elections, criminal costs and roads and bridges elsewhere. (Vide, R.S. 1909, sec. 11423.) It is not clear there was any 'county revenue' left at the end of any year after paying the indebtedness and obligations of the county for the current year. But if there was, then under certain statutory conditions, the county court had the right to transfer it to other proper funds and use it for county purposes for ensuing years or existing deficits, if any, after all contracts entered into with reference to the current year creating present indebtedness had been complied with and all outstanding current county obligations had been satisfied. "

The duties of the treasurer with respect to entering warrants is set forth in Section 12139, as follows:

"He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same was presented;

and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment:"

Section 12140 contains the provisions for the county treasurer paying the warrant. The pertinent part is as follows:

"No county treasurer shall refuse the payment of any warrant legally drawn upon him and presented for payment, for the reason that warrants of prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon, sufficient to pay such prior warrants and any such warrant so presented; but such treasurer shall, as he shall receive money into the treasury belonging to the fund so drawn upon, set the same apart for the payment of warrants previously presented for the ordinary current expenses of the county as mentioned in the preceding section, and in the order presented, so that no such warrant of subsequent presentation shall remain unpaid by reason of the holder of such warrants of prior presentation failing to present the same for payment after funds shall have accrued in the treasury for their payment: "

The Johnson decision also holds that delinquent taxes, when collected, must be applied to outstanding

warrants issued in the year in which the taxes were levied. Since the enactment of the budget act we think that the Johnson decision is also decisive of what shall be done with any surplus remaining in any year. After referring to the sections herein-above quoted the court says, l. c. 631:

"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."

We are, therefore, of the opinion that the unpaid obligations should be discharged out of any surplus remaining and should be paid according to the registration of the warrants.

III.

Your third question is:

"As to Sec. 14, pages 348 & 349, Missouri Laws, 1933, can any surpluses in each of several years following and including the year succeeding the effective date of the present Budget Law of Missouri, be used to pay any outstanding warrants or unpaid obligations in any of the years preceding and including the year prior to the effective date of the present Budget Law of Missouri?"

Evidently you refer to the first paragraph on page 349, which is as follows:

"Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year. Payment of any legal unpaid obligations of any prior year,

however, shall be a first charge in the budget against the revenues of the budget year; provided that any deficit existing at the end of the year preceding that in which this act takes effect may be paid over a term of years, or in such other manner as the county court may determine."

As stated in the beginning of this opinion, your county is not affected by this portion of Section 14; sections 9 to 20, inclusive, being applicable to counties of more than 50,000 population; the first eight sections, applicable to your county, do not give the county court any such power. We think the logic and authorities heretofore quoted in your first two questions are applicable and, as stated in the last paragraph of your letter, that each year following and including the effective date of the budget law must carry itself financially, and that all obligations of any year were to be paid from the assessed revenue in that particular year. If any surplus remains after all obligations are paid said surplus may be used in paying past obligations.

Respectfully submitted,

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APPROVED:

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