

COUNTY BUDGET ACT: County court must use surplus funds of the year 1935 after all classes of the budget act have been properly cared for, for the purpose of paying outstanding warrants of previous years

August 28, 1937

Honorable Henry Cain
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri



Dear Sir:

This Department is in receipt of your letter of August 13, 1937, wherein you make the following inquiry:

"The County Court of Stoddard County has asked me to secure your opinion on the following state of facts, to-wit: The County Court of Stoddard County, at the proper time, set up its budget for the year 1935, and in pursuance to that budget specified the amount of warrants which could be drawn on each class provided by law, and issued the full amount authorized under the budget for each of the first five classes. Since that time sufficient revenue has been collected to pay off all of the 1935 warrants issued, and there is in addition a surplus of some four or five hundred dollars in the 1935 revenue account over and above the amount of outstanding warrants, which amount was the

full amount authorized under the budget.

"Two sets of claimants are claiming this surplus money together with any other surplus monies which may come into the 1935 County revenue account. The first set of claimants are the parties holding 1928 county revenue warrants, and which 1928 county revenue warrants are the oldest outstanding unpaid obligations of Stoddard County. The second set of claimants are parites who furnished services to the county during the year 1935, and who were not paid, by the County Court, in warrants for the reason that 1935 budget allowance for each of the classes therein for the year 1935 had been exhausted at the time of the presentment of the bill.

"The warrant holders contend that the budget law was passed for the specific purpose of making the County, not only live within its expected revenue and thereby putting its current position in a businesslike shape, but that the budget was also passed for the specific purpose of making the county get its past finances in a businesslike shape by applying all surpluses over and above the budget allowance to the oldest outstanding obligations. In other words they contend that Section 5, dealing with class 6 warrants, of the County Budget Act of the Laws of Missouri for the year 1933, means that only class 6 warrants could be issued by the County Court for the payment of any bill over and above

that specifically set up in the first five classes of the budget, and that these class 6 warrants cannot be issued if there is any outstanding warrants of prior years remaining unpaid.

"The holders of the bills for 1935, which have not been paid or allowed, for the reason that they were not within the budget limit for 1935, contend that it does not make any difference how much a county may spend for any particular year, provided it has the money with which to pay therefor, even though the county may have run into debt for large amounts during any prior year. In other words the question is whether or not the holders of bills for services rendered in 1935 shall receive the surplus over and above the budget, or whether the holders of the oldest outstanding warrants will receive the money? If the surplus money goes to the payment of the oldest outstanding warrants, there is some hope that the indebtedness of Stoddard County will some day be paid off, and the finances of the county placed in the condition which was apparently intended by the legislature when it passed the budget act. If however, the surplus money goes to pay the outstanding bills, there may never be any reduction in this indebtedness. Please advise to whom this surplus money should be paid - warrant holders or claim holders."

The main question involved is, in effect:

That surplus money, to the amount of approximately \$500.00, remains from the revenue of 1935 after all warrants issued in said year have been paid for all expenditures anticipated and estimated under the County Budget Act.

Warrants for 1928 remain unpaid.

Parties performing services for the county in 1935 but no warrants issued in payment of such services for the reason that the budget had been exhausted at the time claims for such services were presented.

Which parties are entitled to the surplus money?

Under the Constitution of 1875, Sections 11 and 12, of Article X, were included. The purpose of including the two sections was to remedy an evil which existed prior to the Constitution of 1875, to the effect that county affairs and business were conducted so loosely and inefficiently that most counties in the State were overwhelmingly in debt. The effect of the above mentioned provisions of the Constitution was that warrants were issued and the warrants so issued each year must be paid out of the revenue provided and collected for that year. In other words, the courts have construed the provisions in the Constitution to place counties on a cash basis to avoid excessive debts. The wisdom of the sections has been demonstrated through experiences of counties for a number of years, but in recent years, perhaps due to the strained economic conditions which have existed in the State for the past six or seven years, the Legislature, in 1933, sought to promote further efficiency and economy in county expenditures by enacting the Budget Act, Laws of Missouri 1933, page 340, et seq. The Legislature of 1937 made slight amendments to Sections 2 and 5 of the

Act, neither of the amendments having any bearing on the question at hand. The decisions with reference to the warrants that were to be issued, the validity of same, and how the same were to be paid under the Constitution of 1875, Sections 11 and 12 of Article X, have been interpreted in several instances by the courts.

A decision which has been followed which clearly sets forth the effect of Sections 11 and 12 of Article X, is that of *Kansas City, Fort Scott & Memphis Railroad Company v. Thornton*, 152 Mo. 1. c. 575.

Other decisions bearing on the same question and holding to like effect are *State ex rel. V. Johnson*, 162 Mo. 621, and *State ex rel. v. Allison*, 155 Mo. 325.

With these decisions before us, and applying the same to the fact that there are surplus funds remaining from the revenue of 1935, then, under the above decisions, we should be of the opinion that the claimants of 1935 would be entitled to the surplus money. But the Budget Act of 1933 must be considered in connection with the contentions of both parties. Your letter states that the county court carried out its duties by making an estimate and set up a budget dividing the expenditures into the five classes and expended the money in accordance with the estimate as made in the classes, all of which is in conformity with the provisions of the Act.

The county court must follow the County Budget Act and cannot ignore its provisions. The Budget Act being only four years old there have been few decisions interpreting its effect. However, the Supreme Court of Missouri, on August 26, 1937, rendered a decision in the case of *Harry Traub v. Buchanan County, Missouri*, Number 34883, regarding claims filed in the County Court of Buchanan County for services rendered during the year 1934. Buchanan County is a county of more than 50,000 population, your county less than 50,000. Therefore, the financial set-up with reference to the Budget Act differs

in the county according to the population. However, we think that the above mentioned decision is determinative of the question. We quote from the opinion, as follows:

"No contention was made that the persons named in the forty-one counts did not render the service as represented. The county pleaded various defenses, among which was, that the county budget law, Laws 1933, page 340, etc., Mo. St. Ann., page 6434, was not complied with in any one of the contracts or orders forming the basis of the various claims. The county, therefore, takes the position that it was not legally obligated to pay any of the claims for which suit was brought. Respondent asserted, at the trial, that the budget law was unconstitutional. The reply filed by respondent, to the answer of the county, contained the following:

"That said section 12218 at page 352 of the Laws of Missouri for the year 1933 is also unconstitutional and void as in conflict with and contravention of section 36, article VI of the Constitution of Missouri in that said section undertakes to deprive the County Court of its right and power to transact the business of the county and to vest said power in the county auditor of defendant county and that said section 12218 at page 352 of the Laws of Missouri for the year 1933 is unconstitutional and void as in violation of Section 28 of Article IV of the Constitution of Missouri in that the matters undertaken to be legislated upon in said section are not clearly expressed in the title of said act.'

"Since this case was lodged here on appeal, several cases involving the budget law have been decided by this and other courts. The case of Graves v. Purcell, 85 S. W. (2d) 543, 337 Mo. (en banc) 574, disposed of respondent's second contention, that the title of the act was defective. It was there decided that the title of the act was not defective. Without discussing the question again, we rule the point adversely to respondent upon the authority of that case. "

* * * * *

"The effect and intent of the budget law, as we understand it, is to compel, or at least to make it more expedient for the county courts to comply with the constitutional provision, sec. 12, art. 10, Mo. Constitution, which provides that a county shall not contract obligations in any one year in excess of the revenue provided for that year. The budget law leaves the transaction of business to the county courts."

* * * * *

"The budget officer simply determines whether sufficient money is provided with which to pay the obligation intended to be incurred by any contract or order presented to him for indorsement. This is a mere matter of book-keeping. If the cash is on hand or has been provided for, it is the duty of the auditor or budget officer to make such indorsement upon the order or contract. If not, he merely refuses to make the indorsement. Prior to the enactment of the budget law, a

county court had no right to incur obligations in any one year in excess of the revenue provided for that year. By the enactment of the budget law the legislature has merely provided ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income. The power of the county court not having been curtailed by the enactment of the budget law, the point made by respondent is without merit and is ruled against him."

* * * * *

"If respondent means, by the argument advanced, that the county court was estopped to assert the invalidity of the contracts, then we are confronted with the proposition that the authorities are against that contention. We need not discuss this question at length, because in a recent case, decided by the United States Circuit Court of Appeals, 8th Circuit, this identical situation was fully considered. See *Layne-Western Co. v. Buchanan County, Missouri*, 85 Fed. (2d) 343. There, a contractor, who had performed his contract, sued the county to recover the contract price. Non-compliance with the budget law was the principal defense of the county. The court discussed the doctrine of estoppel and held that the established rule in Missouri is, that the county was not estopped to make the defense in question. Judge Stone, in *Layne-Western Co. v. Buchanan County, Missouri*, 85 Fed. (2d) 343, 1. c. 350, 351, a concurring opinion, had the following to say:

"The situation is that section 19 of the Budget Act (Mo. St. Ann., sec.12126s,p.6434) expressly states that "no contract or order imposing any financial obligation on the county shall be binding on the county 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". (Italics added.) Concededly, none of these quoted requirements was here present.

"The Missouri rule is that, where a statute expressly states that, unless certain things are done, a contract by a political subdivision or a municipal corporation shall be invalid, there can be no estoppel urged to support the contract. Mullins v. Kansas City, 268 Mo. 444, 459, 188 S. W. 193; Seaman v. Levee District, 219 Mo. 1, 26, 117 S. W. 1084; Edwards v. Kirkwood, 147 Mo. App. 599, 614, 127 S. W. 378; W. W. Cook & Son v. City of Cameron, 144 Mo. App. 137, 142, 128 S. W. 269, 270; Also see Phillips v. Butler County, 187 Mo. 698, 86 S. W. 231.' "

It would appear from the above decision that the terms of the Budget Act are mandatory and must be followed strictly. The extra income of 1935 can be used for any lawful purpose, according to Class Six, page 342; the conditions under which the same can be used are explained under Section 5, page 344, as follows:

"Amount available for all other expenses after all prior classes have been provided for. No expense may be incurred in this class until all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest. Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

In view of the decision quoted extensively above, and the provisions of Class six herein quoted, we are

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of the opinion that the surplus money in question must be used in the discharge of outstanding warrants of 1928.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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