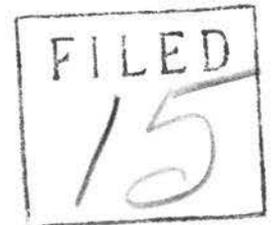


COUNTY BUDGET ACT -- County treasurer should preserve priority payment according to classes. Not necessary to retain funds in any one class to the detriment of other classes in advance of the time payments are due if the priority can be preserved; not necessary for County Treasurer to determine amount of salary court reporter should receive under Sec. 11720; County Treasurer incurs no liability under Sec. 8 of County Budget Act if warrant is legal on its face and comes within the terms of the Act.

November 3, 1937

Honorable Worth Caughron
County Treasurer
Christian County
Ozark, Missouri



Dear Sir:

We are in receipt of your letter of October 21, wherein you present several questions. In reply thereto, we shall undertake to answer your questions in separate paragraphs.

I. Your first question is as follows:

"In your opinion should all warrants in Class I of the County Revenue be paid before paying warrants in the other Classes? It has been the custom of the County Court to apportion an amount in each Class according to the budget and pay out of each class as funds become available."

On June 21, 1934, this department rendered an opinion to Miss Carrie Williams, Treasurer of Barry County, Cassville, Missouri, which discusses the question, and, we believe, answers your question. We are enclosing herewith copy of that opinion.

II. Your second and third questions are as follows:

"The Court Reporter for the 31st judicial circuit receives judge's certificates for a maximum annual salary calculated upon a \$3,000.00 rate for the entire circuit. Section 11720, R. S. Mo. provides that in circuits of more than 45,000 population and less than 60,000 that the maximum salary of a court reporter shall be \$2,500.00. The population of the 31st judicial circuit as determined by section 11808, Laws of Missouri 1933, page 370, is 57,146. In your opinion, what is the proper maximum salary for the court reporter in this circuit?"

"The Christian County Court appropriated the proportional amount Christian County would pay toward a court reporter's maximum salary of \$3,000.00. Does this fact create any legal right to salary which would be in excess of the amount provided under Section 11720, R. S. Mo. 1929?"

We are enclosing herewith copy of an opinion rendered on October 29, 1935, to Honorable Lewis A. Duval, Prosecuting Attorney, Macon, Missouri. It would appear from the opinion that it is not a question for you, as County Treasurer, to determine the legal amount that the court reporter is entitled to receive. The certificate the circuit judge presented to you, as County Treasurer, for payment of the Court Reporter's salary, is sufficient authority for you to pay the same. The fact that the county court appropriated a certain amount for the Court Reporter's salary does not create any legal right to a salary which would be in excess of the amounts as provided in Section 11720, R. S. Mo. 1929.

In other words, if the Reporter does not receive the legal amount to which he is entitled, he does not waive his right to additional amount, nor does the county waive its rights by paying the Court Reporter more than he is legally entitled under Section 11720, and may sue to recover same. Consolidated School District vs. Cooper, 28 S. W. (2d) 384.

III. Your fourth question is as follows:

"As Treasurer of Christian County, what are my duties and liabilities under the Budget law for paying on a circuit judge's certificate in excess of the amount provided under Section 11720, R. S. Mo. 1929?"

We assume that you refer to the penalty section under Section 8 of the County Budget Act, page 346:

"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."

The general rule with respect to County Treasurers' paying county warrants regularly issued by the county and presented for payment is discussed in the case of the County of Jackson vs. Fayman, 329 Mo. 1.c. 441:

"Much is also said as to the heavy penalties imposed on county treasurers as ministerial officers in refusing to pay county warrants regularly issued by the county and presented for payment. It is true that such ministerial officers are not and should not be required to investigate and determine for himself the legality or validity of such warrants and should ordinarily pay same without question. Here, however, the constituted authority which had caused this warrant to be issued, and whose order gave it birth and vitality, had taken on itself the responsibility of annulling its action and stamping out its life. The whole trouble here arises from the fact that this ministerial officer undertook to decide for himself that the action of the county court in issuing this warrant was a judicial act and a finality and that such court did not have the judicial power to set aside or modify its judgment after the term. That ministerial officers are not generally visited with penalties or held personally responsible when acting in good faith is held in State ex rel. v. Diemer, 255 Mo. 336. That they must at times assume some risk in the performance of judicial duties is unavoidable, and we commend defendant's action in taking a bond for his own protection on paying this warrant."

Honorable Worth Caughron

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November 3, 1937

Therefore, we are of the opinion that you incur no liability under the Budget Act with respect to paying a Court Reporter or the amount that he is to receive or the determination of his salary if the warrant presented to you is regular on its face and is properly presented for payment. It does not devolve upon you, as County Treasurer, acting in good faith and in the absence of fraud, to determine the correct amount of salary the Court Reporter should receive.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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