

COUNTY BUDGET ACT:

HOUSE BILL 177:

CIRCUIT CLERKS: Shall only receive additional compensation out of excess which exists in any class at the close of the fiscal year; the transfer of the fund can be made under the authority of Sections 12167 and 12168, R. S. Mo. 1929.

August 24, 1937

Honorable G. Derk Green
Prosecuting Attorney
Linn County
Marceline, Missouri



Dear Sir:

This Department is in receipt of your letter of June 26 relating to the budget as affected by the recent act relating to the salary of circuit clerks. Your letter is as follows:

"I would like to request an opinion in regard to the effect of the circuit clerk bill upon payments made as compensation to the Circuit Clerks through the county court. This bill was signed by Governor Stark on June 22nd and contained an emergency clause. The county court suggests to me that money for the payment of this additional compensation was not provided for in the 1937 budget. As a result, there is no money in Class 4 to pay for this and this is the class out of which such expense is payable. However, there is plenty of money in Class 3 in this county, out of which the additional amounts could be paid, and it is possible that there will be money left in Class 4 at the end of the year.

"We would like an opinion as to whether or not this additional money to the circuit clerk can be paid out of funds in

Class 3 at the present time. Also, whether or not this amount can be paid to the circuit court out of any funds remaining in Class 4 at the end of the year after payment of other items covered by the budget.

"We would also be glad to have your opinion generally covering the interpretation of this bill, its effect and the method in which the matters involved should be dealt with by the county court and the county treasurer."

According to the provisions of the County Budget Act, page 340 et seq., Laws of Missouri 1933,

"The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to 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."

Under Section 8, page 345, is the following provision:

"The county clerk shall within five days after the date of approval of such budget estimate, file a certified copy thereof with the county treasurer, taking his receipt therefor, and he shall also forward a certified copy thereof to the state auditor by registered mail.

There is no provision in the Act empowering the county court to revise, alter or change the budget after it has been completed and filed in the proper manner. The Act affecting the salary of the circuit clerks being passed since the filing of the budget, consequently, no provision has been made in the various counties for paying the additional compensation of the clerks.

Section 1 of the Act places the solemn duty on the county court of sacredly preserving priority of payment according to the classes as enumerated in Section 2.

In view of the fact that the Act affecting the salaries of circuit clerks, and the same also applies to the Act restoring the county treasurer, we can come to no other conclusion than that there is no manner by which these officers can be paid out of the first five classes of the Budget Act at the present time. In fact, Section 3, page 342, of the Act, contains an express provision to the following effect:

"No officer shall receive any salary or allowance for supplies until all the information required by this section shall have been furnished."

Therefore, there remains but one possibility as far as the classes are concerned, and we refer to class six, page 343, which 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."

The salaries of the officers being legal demands and claims, we deem the expression "for any lawful purpose" to be the authority for the county court to pay the officers, provided the conditions, as imposed in class six, can be complied with.

Referring to your question as to a balance or surplus remaining in any one class, the Budget Act did not repeal or abrogate the entire financial structure of the county but only repealed such statutes as were in conflict therewith.

We therefore refer you to Sections 12167 and 12168, Revised Statutes Missouri 1929; said sections 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."

"Nothing in the preceding section shall be construed to authorize any county court to transfer or consolidate any funds not otherwise provided for by law,

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excepting balances of funds of which the objects of their creation are and have been fully satisfied."

The above sections have existed in our statutes for many years prior to the passage of the Budget Act, yet we are of the opinion that they do not in anywise conflict with the terms of the Budget Act and can be applied thereto.

Therefore, if at the close of the fiscal year there remains any funds in any class, after the payment of all items which have been included in the budget, we are of the opinion that such excess may be used for the payment of the increase in the salary of the circuit clerks.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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