

COUNTY BUDGET ACT:Sec.2,page 341,Laws of Mo.1933,not applica...
to St.Louis County. County Budget Act takes precedence over
all statutes when there is a conflict. County Court has power
to transfer within the same fund any unencumbered appropria-
tion balance. Second paragraph of Section 14 is unconstitu-
tional.

May 14, 1937



Honorable Owen G. Jackson
Chairman
Board of Election Commissioners
St. Louis County
Clayton, Missouri

Dear Sir:

This Department is in receipt of your recent letter relative to the payment of certain obligations incurred by the Board of Election Commissioners in carrying out its duties. Your letter outlining the history of the facts surrounding the questions which you propound at the close of your letter, is as follows:

"As you know, the Board of Election Commissioners is operating under the provisions of Senate Bill Number 22 passed in 1935. (Laws 1935 p. 229).

"On April 25th, 1935, your Office gave an opinion addressed to Honorable C. Arthur Anderson, Prosecuting-Attorney of Saint Louis County, and reference is made to that opinion for consideration in connection with this letter.

"On January 3rd, 1936, the Presiding Judge of the county court, as Budget Officer under the provisions of the County Budget Law (Laws 1933, p. 340) after public hearings, prepared his annual budget, and in that budget an appropriation was allowed to the Board of Election Commissioners

in the sum of \$150,000 for the year 1936, i. e., an appropriation was made of that sum out of estimated revenue, a large part of which was not collected and a large part of which was used to pay unpaid legal obligations of a prior year out of the revenues of the budget year. In accordance with the provisions of Section 14 of the County Budget Law, making such obligations a first charge in the budget against the revenues of the budget year.

"During the year 1936, the cost of elections, including the cost of installing the permanent registration set-up, incurred by the Board of Election Commissioners was a total sum of \$132,996.30. Of this sum warrants were issued and paid by the County Treasurer in the sum of \$38,170.54, leaving a balance of unpaid claims in the sum of \$94,825.76.

"On October 14th, 1936, before all of the above expenses had been incurred, the county court entered an order as follows:

" 'In the matter of General)
Revenue Fund Warrants.)

At the request of E. O. Harper, Accounting Officer, it is ordered by the court that the Clerk of the Circuit Court, and the Election Commissioners respectively, be and they are hereby directed to issue no further warrants drawn on the General Revenue fund for

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protest by the County Treasurer,
as warrants have already been
issued up to the amount of the
Anticipated Revenue of said fund.

(signed) THOMAS H. THATCHER,
Presiding Judge.'

"At the time of the receipt of this order the Election Commissioners had issued warrants as aforesaid in the sum of \$38,170.54, and therefore had the sum of \$111,829.46 remaining of the sum allocated by appropriation to it in the budget, but which was not on hand by reason of the fact that all of the revenue as estimated was not collected, and for the further reason that unpaid legal obligations of a prior year were paid out of the revenues of the budget year in accordance with Section 14 of the County Budget Law, which made such obligations a first charge on the revenues of the budget year.

"The opinion given by your office on April 25th, 1935, indicated that it is the duty of the Election Commissioners to issue warrants for proper accounts."

We shall undertake to answer your questions in numerical order.

I

"First: Is the classification of expenditures and priority of payment under Section 2 of the County Budget Law applicable to Saint Louis County and to the Board of Election Commissioners?"

The County Budget Act, Laws of Missouri 1933, page 340 et seq., contains two methods for counties, each based on a population basis, for preparing the budget.

Section 1, page 340, contains the following sentence:

"All counties now or hereafter having a population of 50,000 inhabitants or less, according to the last federal decennial census, shall be governed by Sections 1 to 8, inclusive, of this act."

Section 9 contains the following sentence:

"The budget officer shall receive no extra compensation for his duties under this Act, and Sections 9 to 20, inclusive, of this Act shall apply to such counties."

Knowing the population of St. Louis County to be more than 50,000 inhabitants, and, by virtue of the above two quoted provisions, we are of the opinion that the provisions of Section 2, page 341, are in no way applicable to counties of the population of St. Louis County.

II

"Second: Does the order of the County Court under date of October 14th, as aforesaid, prevail over the statutory obligation of the Election Commissioners with respect to the issuance of warrants for proper accounts when warrants have already been issued up to the amount of the anticipated revenue? "

The purpose of the County Budget Act was to promote efficiency and economy in county government. The term 'budget' itself is to be used in its ordinary sense. It was evidently the intention of the Legislature to enable the various county courts to have a complete financial picture of the counties' financial condition before them at all times. The Budget Act did not repeal and over-turn the former financial structure of counties, but by Section 22, page 351, Laws of Missouri 1933, the same being as follows:

"All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed."

the Budget Act will take precedence over all statutes when the same are in conflict; the county court, evidently desiring to prevent warrants being issued in excess of the anticipated revenue, entered the above order signed by Judge Thatcher. Warrants issued in excess of anticipated revenue have been ruled on several occasions by our Supreme Court to be invalid. Your particular attention is directed to the decision in the case of State ex rel. v. Wabash Railway, 169 Mo. 1. c. 574, wherein various prior decisions are reviewed:

"The leading case in this State upon the power of a county court under the present Constitution to contract a debt for any purpose in excess of its revenue for the current year, is Book v. Earl, 87 Mo. 246, in which it was said: 'The evident purpose of the framers of the Constitution and of the people who adopted it, was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this

point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.

"That case was subsequently followed in *State ex rel. v. Payne*, 151 Mo. 663, and in *Railroad v. Thornton*, 152 Mo. 570.

"In *Prince v. Quincy*, 128 Ill. 443, it was said that the inhibition contained in the Constitution of Illinois 'was intended to embrace indebtedness of every description, nature, and kind, and in every sense of the term, whatever the character or form by which it was evidenced, when made or issued after the limit should be reached. This leaves no possible ground for the supposed distinction between an indebtedness for current expenses and other accounts, or between one payable out of a specific fund and one chargeable against the city generally.'

"In *Buchanan v. Litchfield*, 102 U. S. 278, the Supreme Court of the United States, said: 'The first and most important of the certified questions involves the construction of the twelfth section of the ninth article of the Constitution of Illinois. The words employed are too explicit to leave any doubt as to the object of the constitutional restriction upon municipal indebtedness; the purpose of its framers, beyond all question, was to withhold from the legislative department the power to confer upon municipal corporations authority to incur indebtedness in excess of a prescribed amount.'

The authority, therefore, conferred by the act of April 15, 1873, to incur indebtedness in the construction and maintenance of a system of waterworks, could have been lawfully exercised by a city, incorporated town or village, only when its liabilities, increased by any proposed new indebtedness, would be within the constitutional limit. No legislation could confer upon a municipal corporation authority to contract indebtedness which the Constitution expressly declared it should not be allowed to incur.' "

When warrants are valid and issued within the anticipated revenue the method of paying the same is very succinctly stated in the case of State ex rel. v. Johnson, 162 Mo. 621:

"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."

Therefore, we are of the opinion that the county court's order of October 14, 1936, was a valid and proper order. The fact that the statutes confer certain obligations on the election commissioners creates conflict with the Budget Act would not alter the situation. As stated in Section 22, quoted supra, the Budget Act repeals or takes precedence over all statutes when there is a conflict.

III

"Can the county court, after making an appropriation and allocation by virtue of its announced budget, thereafter lawfully decrease the amount of warrants which may be drawn on the appropriation, either because of insufficient revenue or for the purpose of re-allocating the funds allowed by appropriation to the Election Commissioners to other accounts.?"

Bearing in mind our answer to your second question we would naturally conclude that the county court could lawfully decrease the amount of warrants which may be drawn on the appropriation because of insufficient revenue. We conclude that this is true if the insufficient revenue referred to means the decreasing of the number of warrants due to the fact that warrants have already been issued to the amount of the anticipated revenue. But if the revenue is simply insufficient and yet warrants have not been issued in excess of the anticipated revenue we think the warrants are valid and could be paid in the manner as set forth in the Johnson decision, quoted supra. As to that portion of question III relating to the 're-allocating the funds allowed by appropriation to the Election Commissioners to other accounts' we think the same is determined by Section 16, page 349, said section being as follows:

"The county court shall have power to authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; provided that such action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner hereinbefore provided."

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Analyzing the section, the county court has the power to transfer within the same fund any unencumbered appropriation balance. There is no provision in the Budget Act permitting the county court to change or alter the budget after it has been finally accepted and filed. Section 14 empowers the county court to revise, alter, decrease or increase the items, eliminate or add new items, but such changes must be made before the time for filing the budget. Therefore, if the appropriation is encumbered, that is, the funds are allocated for a definite purpose, and the purpose for which said funds were allocated has not been consummated or expired the county court would have no authority to take away or transfer the funds from one spending agency to another. In addition, the proviso in said Section 16 further restricts an unencumbered appropriation to the recommendation of the budget officer and only during the last two months of the year. Of course, transfer of the emergency fund, as provided in the next to last paragraph of Section 11, may be done by the county court under the conditions as therein imposed.

IV

"If this latter question be answered in the affirmative may such reallocation or reappropriation be made so as to prejudice the rights of persons whose contracts had been let, performed, and payment due before the reallocation?"

Having answered your question III in the negative, it will be needless to give consideration to Question IV.

V and VI

"Can the Board of Election Commissioners lawfully issue warrants against revenues of 1937 to pay claims incurred for the holding of elections in 1936, if there are already warrants issued and out-

standing over and above the amount actually collected of the anticipated revenue for 1936?

"Does that part of Section 14 of the County Budget Law, providing that unpaid legal obligations of a prior year shall be a first charge against the revenues of the budget year, directly conflict with the provisions of Section 12, Article 10 of the Missouri Constitution providing that 'No county * * * shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year, the income and revenue provided for such year, without the consent of two-thirds of the voters * * ' when in the case of Saint Louis County the payment of such legal obligations of a prior year under Section 14 will take so much of the anticipated revenue of the budget year as to make the payment of estimated expenditures of the budget year impossible because of the fact that such expenditures will then exceed the estimated revenue for the budget year? "

Questions V and VI are closely related.

The second paragraph of Section 14, page 349, 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."

Your questions thrust upon this department the duty to declare the above portion of the section to be constitutional or unconstitutional. It has always been the policy of this department to accept the laws as passed by our Legislature and assume the constitutionality of the same, believing that so serious and grave a duty can only be determined by the Supreme Court. However, the constitutionality of the above paragraph has been assailed several times. We shall undertake to give you our conclusions regarding the constitutionality thereof. Evidently, the section undertakes to mortgage the future for the past; to do that which the framers of the Constitution evidently had in mind to avoid. In substance, it places a lien on the ensuing year's revenue for the past fiscal year's indebtedness. It was the intention of the framers of the Constitution, and we refer to Section 12 of Article X, to compel each county to conduct its affairs on a cash basis, that is, not to spend more in a current year than the amount of its receipts can reasonably be anticipated. If a county is permitted to charge the revenue of future years for past indebtedness it is not a far-fetched conclusion that in a given number of years St. Louis County would be using all of its current revenue for past indebtedness.

We think the decision as rendered by the court in *Trask v. Livingston County*, 210 Mo. 582, 1. c. 592, enunciates the principles of law which are applicable to the paragraph referred to in Section 14 and determines its constitutionality or unconstitutionality:

"The constitutional provision found in section 12 of article 10 of that instrument has often been construed by this court. In *Book v. Earl*, 87 Mo. 1. c. 252, it was well said: 'The evident purpose of the framers of the Constitution and the people who adopted it was to abolish, in the administration of county and municipal government,

the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it. "

And further, at l. c. 594:

"In Mountain Grove Bank v. Douglas County, 146 Mo. 42, it was expressly held that the mere issuance of the warrants did not create an indebtedness. Hence, the indebtedness for these bridges was created, if at all, by a compliance with the law governing the letting and contracting for bridges already noted. When the county became indebted on these bridge contracts must be determined by the 'income and revenue provided for such year,' which under the Constitution must be looked to for the payment of such indebtedness and it was the 'income and revenue provided' for the year 1889, which the county court was authorized to appropriate for that purpose, and not the revenue for the year 1890, which at the date of the contract for the building of said bridges had never been assessed, levied or collected. The language of the Constitution is, 'No county . . . shall be allowed to become indebted in any

manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year.' It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created and prohibits the anticipation of the revenues of any future year. Any other construction would render section 12 of article 10 nugatory, for if the county court of Livingston county in September, 1889, could anticipate the revenue of 1890, it could also anticipate the revenues of 1891 and 1892, and would have the power of the county with reference to indebtedness what it was before the Constitution of 1875 was adopted. In Gray's Limitation of Taxing Power and Public Indebtedness, section 2162, the author expresses the view that 'the time when the debt actually comes into existence as a binding obligation on the municipality, is the time as to which all calculations as to its validity should be made.' "

And further, at l. c. 596:

"It has been very recently considered, in its application to the subject in hand, by the Court In Banc, and the conclusion was announced that such an obligation to pay an agreed sum, year by year, for the furnishing of certain necessary supplies during a term of twenty years, was not an immediate indebtedness for the entire amount that might ultimately become due by installments during that term.' (Saleno v. Neosho, 127 Mo. 627.) It will, we think, be seen upon close examination of Saleno v. Neosho and the Lamar cases that the great question was whether there was an aggregate indebtedness

created in the beginning which would exceed the debt-making power of the corporation or whether the indebtedness should be treated only as an obligation which would arise from year to year as the water contracted for was furnished, and in order to ascertain whether the municipal corporation was transgressing the constitutional limit regard was had only to the amount which might fall due within a certain year and if the revenue for that year was sufficient over and above the payment of other expenses, then there was no debt incurred within the constitutional prohibition. In other words it was practically decided that although the contract was for twenty years it was considered by the court from the debt-creating point of view as if it had been twenty separate contracts, one covering each year. And the authorities all agree that if the amount to be paid in any year under such a contract exceeds the income and revenues for such year against which it is a charge, it would be invalid, at least to the extent of such excess. There are many considerations which in our opinion sustain the decisions in those cases, but they afford no authority for holding that the county court in this State under the Bridge Act can contract for a supply of bridges covering a period of years, one bridge to be built each designated year and to be paid for out of the revenue for the year in which it shall be built. All the provisions of the Bridge Act are inconsistent with any such power in the county court."

And further, at l. c. 599:

"But confining ourselves to the facts in evidence and the statute governing

the building of bridges, as already said the statute required the county court to make an appropriation before the Road and Bridge Commissioner let the contract. The record shows that the county court on the 5th day of September, 1889, made an appropriation to pay for the building of the bridges. Now, out of what revenue was it authorized to make this appropriation, that of 1889 or that of 1890? We think the Constitution answers this question: they could only make it out of the revenue of 1889, and in this particular case this conclusion is reinforced by the fact that the bridges contracted for were to be completed in the year 1889, and as the obligation was incurred in 1889 and the bridges were to be built in that year and the appropriation was made in that year, we think there can be no escape from the conclusion that the indebtedness thereby created was a charge against the revenues provided for the year 1889, and not the revenues of 1890. Clearly the county court was not authorized to appropriate revenues which were to be derived from taxation in the year 1890, when such taxes had never been assessed, levied or collected. While the county court may in any one year draw warrants, after the revenue has been provided and the taxes levied within the scope of the levy and income for such year, it is too plain for argument that the Constitution forbids the anticipation of the revenues of any subsequent years; if not, all that has been said in regard to the force and effect of section 12 of article 10 of the Constitution to the effect that its purpose was to put counties upon a cash system instead of the old credit plan, has been in vain."

The above quoted decision is further quoted from approvingly in the cases of *Hawking v. Cox*, 334 Mo. 1. c.

648, and Sager v. City of Stanberry, 336 Mo. 213.

We are therefore of the opinion that that portion of Section 14 which attempts to make the legal unpaid obligations of a prior year a first charge in the budget against the revenues of the budget year, is violative of Section 12 of Article X of the Constitution of Missouri. Another argument which fortifies this conclusion is that of decisions by our Supreme Court, and especially State ex rel. v. Johnson, 162 Mo. 621, to the effect that when legal unpaid obligations which have been incurred in any year within the anticipated revenue of the county remain unpaid such legal unpaid obligations can only be paid out of the surplus remaining in any year in the future, or by delinquent taxes which are paid into the treasury for the year in which said unpaid obligations were incurred.

VII

"Is there a direct conflict between the provisions of Section 12139 Revised Statutes of Missouri, 1929, and Section 14 of the County Budget Law, when the payment of unpaid legal obligations for prior year will prevent the payment of 'services that are usual, and for all expenses necessary to maintain the county organization for any year' as provided by Section 12139 Revised Statutes of Missouri, 1929?"

This question relates closely to your Questions V and VI, and, having come to the conclusion that a portion of Section 14 of the County Budget Act is unconstitutional, it would naturally follow that the provisions of 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

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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: Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated,"

would remain potent and in full force and effect.

But conceding there is a conflict between the provisions of Section 12139 and Section 14, and conceding that the paragraph referred to in Section 14 is constitutional, we think the Budget Act would take precedence over Section 12139 for the reason that, as mentioned supra, Section 22 repeals all inconsistent statutes and all conflicting statutes in so far as the same are inconsistent or in conflict with the County Budget Act.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General