

COUNTY BUDGET ACT: County Clerk incurs no liability by issuing warrants out of the 1937 revenue for 1936 expenditures, provided such warrants do not violate the priorities of the classes in section 2 of the County Budget Act. Warrants are invalid which are issued from the 1937 revenue for 1936 expenditures.

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January 11, 1937

Mr. Emory C. Medlin  
Prosecuting Attorney  
Barry County  
Cassville, Missouri



Dear Sir:

This Department is in receipt of your letter of January 5, wherein you make the following inquiry relative to the County Budget Act. Your specific question is as follows:

"I am writing you for our County Clerk who wants to know if under the County budget law, if he would be liable if he issued warrant out of the 1937 budget to pay 1936 debts. It seems that the County Court has failed in 1936 to make their budget large enough, and are now in debt.

"As Prosecuting Attorney of Barry County, I would appreciate your opinion as the statute is not very clear in this matter."

The purpose of the County Budget Act was to promote efficiency and economy in county government. The first eight sections, page 340, Laws of Missouri, 1933, control the finances of counties less than 50,000 population, which would, therefore, include Barry County.

Section 2 relates to the classification of proposed expenditures into six classes, and by Section 1 such classifications and priorities are to be sacredly preserved.

The other sections have reference to the duties of officers in compiling and preparing the budget. Section 8, page 346, is the penal section and is, in part, as follows:

"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."

By analyzing the above quoted section it would appear that the liability imposed on your county clerk would be "as a result of violating or issuing a warrant contrary to the provisions of the act." In all probability the issuance of a warrant by your county clerk, out of 1937 revenue for 1936 expenditures, would not violate the terms of the Act but would effect the validity of the warrant. In enacting the Budget Act the Legislature did not change the complete financial structure of the county, in fact only certain statutes were repealed specifically, therefore, the decisions of the Supreme Court and other statutes which are not in conflict still remain in full force and effect. The county court cannot issue warrants in excess of the anticipated revenue. As was said in the case of State ex rel. v. Johnson 162 Mo. 1. c. 629:

"It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to

pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years. (Randolph v. Knox County, 114 Mo. 142; Andrew County v. Schell, 135 Mo. loc. cit. 39; State ex rel. v. Payne, 151 Mo. loc. cit. 673; Railroad Co. v. Thornton, 152 Mo. 570; State ex rel. v. Allison, 155 Mo. loc. cit. 344; and on this point, Reynolds v. Norman, 114 Mo. 509.)"

When warrants are issued and there are funds retiring the same, or the total amount of the anticipated revenue is not collected, as was said in the Johnson decision, such warrants may be paid out of surplus funds which might arise in subsequent years. Referring to the question of issuing warrants on the 1937 revenue we think that the decision in Trask v. Livingston County 210 Mo. 582, is decisive of the matter:

"The Constitution permits the county court to anticipate the current revenues to the extent of the county's income for the year in which a debt is contracted or created, but prohibits the anticipation of the revenues for any future year. A bridge contracted for in September is to be paid for out of the revenue of the year in which the contract is made, if the appropriation therefor is not in excess of such revenues, and cannot be paid for out of the revenues for the next

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year, even though completed and accepted the next year."

We are inclosing copies of an opinion rendered December 31, 1936, to Honorable William E. Stewart, Prosecuting Attorney, Edina, Missouri, and one rendered to Honorable Paul N. Chitwood, Prosecuting Attorney Ellington, Missouri, dated November 16, 1936, which bear on this question.

#### CONCLUSION

We are of the opinion that your county clerk should not issue warrants out of the 1937 revenue in payment of expenditures of 1936.

You refer in your letter to warrants issued out of the 1937 budget to pay 1936 debts. If the funds out of which you propose to pay the warrants are, in reality, 1936 revenue, then it is our opinion that the same can be paid, but you state in the next sentence that the county court failed, in 1936, to make the budget large enough; therefore, we conclude that you contemplate paying expenditures of 1936 out of the revenue of 1937, which we hold to be illegal. Another feature to be considered if such warrants were issued is to the effect that the priorities mentioned in Section 2 might be jeopardized.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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Inclosure