

COUNTY BUDGET ACT: County court may pay additional salary of deputy circuit clerks if there remains a surplus at the close of the fiscal year.

January 11, 1938



Honorable Henry B. Hunt
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of January 1st, wherein you make a request for an opinion on the facts as contained in your letter, which is as follows:

"The office of Circuit Clerk in Atchison county is a consolidated office, the said officer being Circuit Clerk and ex-officio Recorder of Deeds.

"The Legislature of 1937 enacted legislation governing the salaries of deputies and assistants to the Circuit Clerk, the same being found in Laws of Missouri, 1937, at pages 445-448.

"Our said Circuit Clerk and his deputies, are subject to the Budget Law of this state, and under which they were operating when the salary act aforesaid, purported to go into effect on June 21, 1937.

"Pursuant to said act, and on June 24, 1937, the Judge of the Circuit Court of Atchison county fixed the salaries of two deputies in the office of our Circuit Clerk at \$100.00 per month each.

By reason of the fact that the purported emergency clause appended to said salary act was called in question, the said Circuit Judge on September 27, 1937, re-affirmed its said order fixing said salaries, said date being more than ninety days after the adjournment of said 1937 Legislature.

"By reason of the budget relative to the office of Circuit Clerk having been set long prior to the taking effect of said act, our County Court is doubtful of the propriety of paying the salary of said two deputies, as fixed by our Circuit Judge.

"Query: Is it the duty of the County Court of Atchison county to pay the said salaries of said two deputies as ordered and fixed by the Circuit Judge, notwithstanding said budget law, in view of the fact that said act, Laws Mo., 1937, page 447, Section 11813, provides:

"The Clerk and his deputies and assistants shall present their accounts to the County Court, and said Court shall draw its warrant therefor upon the county treasurer, to be paid out of any money available in the treasury;" and in view of the fact that under the budget as fixed for said office of Circuit Clerk for the year 1937, there remains unexpended, after satisfying all purposes of the budget, sufficient funds to pay said salaries from the time of said order fixing the same.

"We have two opinions from your office that are well considered, touching said salary act, but the same do not relate to deputies only, and we much desire a ruling directly on the point."

The opinions from our Department, to which you refer in your letter, we assume bear on the point involved. Hence, we are not enclosing any copy of same.

By the provisions of the Budget Act, and especially Section 3, page 342, Laws of Missouri, 1933, it is the duty of the various officers of the county to prepare and furnish an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service during the current year. The circuit clerk of your county evidently complied with the provisions of the statutes but the Legislature altered and changed the manner of selecting and approving the deputies and fixing the compensation during the current year of 1937. Once the estimate of the various officers is filed and accepted and approved by the county court, and such estimate is placed in Class 4 of the Act, it then becomes the duty of the county court and the other officers whose duties are prescribed by the Act to sacredly preserve all priorities of all the classes.

This Department formerly ruled that no transfers of surplus funds in any class could be transferred to any other class to supplant the deficit until the close of the fiscal year. In 1937 the Legislature repealed and re-enacted Sections 2 and 5 of the original County Budget Act. The new section provides for transfer of surplus funds, if any exists, from Classes 1, 2, 3 and 4 to Class 5, but there is no provision for transferring funds during the fiscal year in any other class to Class 4.

By the situation as heretofore outlined, and taking into consideration the facts which you present, we are of the opinion that this being the close of the fiscal year, if there remain under the 1937 Budget sufficient funds in the budget of the circuit clerk to pay the additional salary of the deputies, that said funds may be used for that purpose

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providing that there does not exist a deficit, that is, the priorities have been sacredly preserved in the preceding classes. If there exists a surplus in any class at the close of the fiscal year, as has heretofore been held in other opinions, the same may likewise be used to pay the additional salaries of the deputies.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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