

COUNTIES:

Judgment on a warrant gives no preference, outstanding warrants paid out of surplus in the order of their presentation and registration.

November 16, 1938

Mr. Hubert E. Lay
Prosecuting Attorney
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Houston, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"In 1937 most of the warrant holders of Texas County sued the county and obtained judgment. There are however several warrants properly presented for payment and registered which are not in the judgment. We now have an emergency fund which has been created during back years, and the court made an order directing the County Treasurer to pay the oldest registered warrants with this fund. The oldest unpaid warrants were issued in 1930.

"Should the treasurer pay the warrants in the order of their presentation and registration whether the warrant is in the judgment or not? Or should he pay the warrants first not in the judgment, although some may not have been issued or registered until long after many in the judgment? If he should pay those in the judgment should the judgment be credited with the payment of the particular warrant paid?"



Section 12139, R. S. Mo. 1929, provides in part 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 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: * * * * *

At the outset it must be pointed out that a judgment found on a warrant gives no priority or preference over the warrant, or over other warrants. This view is taken in State ex rel. Wright v. Hortsman, 149 Mo. 290, in which the court said at l.c. 295:

"* * Their judgment gave them no lien on the property or revenue of the county, and they could not have compelled the county court to levy a tax to pay their debt in preference to other debts of equal merit. * * * The law gives them no lien on it and there is no reason why they should have it applied to their debt in preference to others."

It is well settled in Missouri that a warrant drawn in excess of the county revenue for a certain year is valid and is payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years. As was said in Kansas City, Ft.S & M R Co. v. Thornton, 152 Mo. 570, l.c. 575:

"* * * * only the surplus of revenue collected for any one year can be applied to the deficit of any other

year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year. * * * * *

A similar ruling may be found in State ex rel. v. Allison, 155 Mo. 344; State ex rel. v. Payne, 151 Mo. 673; Andrew County v. Schell, 135 Mo. 31.

The question, therefore, arises in what order should the warrants be paid. The court en banc in State ex rel. National Bank of Rolla v. Johnson, 162 Mo. 621, had before it the identical question and Judge Gantt, after quoting Section 3166, R. S. Mo. 1889, which is now Section 12139, R. S. Mo. 1929, stated:

"We conclude that this surplus, after the current expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute, section 3166, which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away * * * and when * * a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 3166 provides the rule of priority."

Under the above holding, all warrants of previous years should be paid in the order of their presentation and registration.

CONCLUSION

It is, therefore, the opinion of this department that a judgment on a warrant obtained by a warrant holder gives him no preference over other warrants.

It is further the opinion of this department that when there is a surplus in any year that such may be used

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by the county to pay outstanding warrants, said warrants to be paid in the order of their presentation and registration.

Respectfully submitted

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APPROVED:

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