

COUNTY BUDGET ACT: County Treasurer cannot pay unregistered warrants out of Class 2 when there are registered warrants outstanding payable out of Class 1.

December 15, 1938



Honorable Bryan Moss
Route 1
Hillsboro, Missouri

Dear Sir:

We have your letter of December 8, 1938, which reads as follows:

"As I have been elected County Treasurer of Jefferson County I would like to have an opinion or advice in regard to the following.

"It is my understanding that it has been a custom to pay Petit Jury and Inquest fees when same are presented to the Treasurer, same being charged to Class 2 of the Budget.

"Jefferson County operates on anticipated revenue and I am wondering if it is legal to pay the above when you have registered warrants outstanding in Class No. 1.

"I would like to hear from you as soon as possible as I take over the duties of Treasurer on January 1st, 1939."

Jefferson County, according to the Federal Census of 1930, has a population of 27,563 and is governed by Sections 1 to 8, inclusive, of the Session Laws of Missouri, 1933, page 340, which is known as the County Budget Act. Sections 2 and 5, Session Laws of 1933, page 340, were amended by the Session Laws of 1937, page 422. Class 1 of Section 2 of said law reads as follows:

"The county court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes."

Class 2 of Section 2 of said laws reads as follows:

"Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1.

"In estimating the amount required in class 2 the county court shall set aside and apportion in the budget a sum not less for even years than the sum actually expended in the last even numbered year and for odd years an amount not less than the amount that was actually expended during the last preceding odd numbered year."

Class 1 of Section 2 contains the phrase or sentence, "Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes." This means that if any money is available, it should be first apportioned to Class 1 before available money is appropriated to any other class of the fund to complete the full apportionment or appropriation to that fund. In other words, sufficient money must be apportioned out of the general fund which would be subject to warrants first out of the fund or cash on hand set aside for Class 1 in preference to other classes. This does not mean that if the complete apportionment or appropriation to Class 1 under the Budget Act has been exhausted, then more money should be subject to warrant which would deprive the other classes of their full apportionment or appropriation.

Section 1, Laws of Missouri, 1933, page 340, states as follows:

"The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

Section 2, Class 1, Session Laws of Missouri, 1937, page 422, states as follows:

"Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes."

Section 2, Class 2, Session Laws of Missouri, 1937, page 422, states as follows:

"This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1."

Reading all together, it clearly shows that the Legislature intended to direct the county court that morally Class 1 and Class 2 should have a full and sufficient apportionment and appropriation in preference to any of the other classes.

This apportionment must be considered the same as an appropriation and is so described in Sections 9 to 20, inclusive, of the 1933 Budget Act which apply only to counties of more than fifty thousand population. Funds can not be reallocated from the funds of one class to another unless there is a balance in a certain fund and the objects of its creation are and have been fully satisfied.

The proceeding of reallocation of funds in counties of less than fifty thousand population is governed by Sections 12167 and 12168, R. S. Mo. 1929, which are not in conflict with the Budget Act of 1933 or 1937. Sections 12167 and 12168 read as follows:

"Sec. 12167. 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."

"Sec. 12168. 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, excepting balances of funds of which the objects of their creation are and have been fully satisfied."

In your request you say that warrants payable out of Class 1 have been registered and unpaid when at the same time petit juror and inquest fees have been paid out of Class 2 appropriation. I am assuming that the juror or inquest fees were paid on scrip or warrants that were not protested and registered.

Jurors are to be paid out of Class 2 under the method prescribed in Sections 8765 and 8767, R. S. Mo. 1929, which read as follows:

"Sec. 8765. Upon the demand of such juror, the clerk shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the county treasury."

"Sec. 8767. The treasurer of the county is hereby required, upon the presentation to him of any scrips given by the clerk aforesaid, to pay the same out of any money in the treasury appropriated for county expenses,

in the same manner and subject to the same rules as county warrants; and said scrip shall be received by the sheriff, collector or other proper officer in the payment of any debt due the county."

Inquest fees are paid according to Section 11636, R. S. Mo. 1929, and are payable out of Class 4. Section 11636 reads as follows:

"The county court may authorize and require the coroner to pay, at the view or inquest itself, the legal fees due to jurors, witnesses and interpreters at the same, out of money to be advanced to him, from time to time, out of the county funds, * * *."

It will be noticed that jury scrip shall be paid in the same manner as warrants and that the county court sets aside a certain amount for the performance of the duties of the coroner under Class 4 of the Budget Act.

When the county becomes indebted to anyone under any of the six classes set out in Section 2, Laws of 1937, page 422, it orders the clerk to draw a warrant on that fund as set out in accordance with Section 12169, R. S. Mo. 1929, which reads as follows:

"When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was incurred for which the same was issued, and unless otherwise provided by law, in the following form:

"Treasurer of the county of _____: Pay to _____ dollars, out of any money in the treasury appropriated for ordinary county expenditures (or express the particular fund, as the case may require).

"Given at the courthouse, this _____ day
of _____, 19____, by order of the county
court.

Attest: C D, clerk. A B, president."

The county court sets aside and apportions a certain sum to each of the six classes as set out in Section 2, Session Laws of 1937, page 442, and Section 2, Session Laws of 1933, page 344, after taking into consideration the finances of the county under information furnished by the clerk of the county court under Section 4, Laws of Missouri, 1933, page 343, which mainly recites the estimated receipts and outstanding indebtedness. When the estimated receipts are not paid in as expected, it becomes necessary to issue warrants upon funds when there is no money to pay said warrants. When warrants are presented to the county treasurer and there be no money in the county treasury for that purpose out of that fund set aside for that particular class, the treasurer must register same under Section 12171, R. S. Mo. 1929, which reads as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

By presuming that the fund apportioned to Class 1 of Section 2 of the Budget Act is now exhausted and the warrants are now being protested and registered, they should be entered in accordance with the provisions of Section 12139, R.S. Mo. 1929. The Budget Act of 1933 does not provide for a transfer of funds in counties under fifty thousand population, as it does in Section 16 which applies to counties over fifty thousand population. Warrants protested and registered can be paid out of their respective funds in

counties under fifty thousand population only when the funds are transferred under the provisions of Section 12168, supra, which is possible where other classes, except Class 6, have a surplus.

Conclusion.

In view of the terms of the Budget Act, we are of the opinion that in counties under fifty thousand population it is not illegal for warrants to be issued under Class 2, Section 2, Laws of Missouri, 1937, page 422, if the warrants are not in excess of the amount allotted in the estimate to Class 2, but warrants issued in Class 2 should not be paid until all outstanding registered warrants have been paid in Class 1.

It is further the opinion of this Department that when Class 1 has outstanding registered warrants and no funds are in Class 1, but funds are in Class 2, then the funds of Class 2, or of any other Class, should be transferred to Class 1. In other words, in order to preserve the priorities, the warrants issued in Class 1 should receive priority of payment over any other warrants issued in any other Classes.

Respectfully submitted

W. J. BURKE
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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