

COUNTY TREASURER:

If warrant is presented when no funds are available to pay the same, County Treasurer should follow the provisions of Section 12171, R. S. 1929.

January 8, 1938

H-18

Mr. E. H. Pittman
County Treasurer
Clinton County
Plattsburg, Missouri



Dear Sir:

This Department is in receipt of your request for an opinion of sometime ago based on the following facts and questions:

"We are speaking of County Warrants, only, that are subject to protest; and for the convenience of our taxpayers.

"For instance; where a warrant is presented to the County Treasurer for payment and requesting the money, making a blank indorsement, that is, just signing their name on back of warrant and not making an assignment, that is, the party presenting the warrant doesn't assign the warrant to any particular party, and the fund for which the warrant is drawn on not having enough money to pay warrant in full, not from a budget standpoint, but merely just for the time being, possibly until tax collections are turned over the following month and instead of taking credit for warrant on book, which would, of course, show an over-draft in that particular fund; Can the Treasurer pay warrant, of course, at par value, and the next day protest warrant making a deposit in bank of warrant at par value, which of course, with deposit would balance accounts.

"For an example: Class No. 5 have in budget yet to spend this year \$7,581.64 Balance on hand cash \$160.69 - warrant properly filled out favor John Doe for the sum \$200.00 presents to treasurer for payment, indorses warrant as John Doe, Treasurer pays warrant \$200.00 later finds not enough money in fund to take credit on book, can we pay warrant and take credit for same through a deposit, if paid and deposited, both will be at par value."

We assume by the example which you have presented that you carry the county accounts according to the classes as contained in the Budget Act, Laws of Missouri, 1933, page 340 et seq., that is, the funds are not carried in a common account. Cash receipts of a county usually run irregularly during the months throughout the year. Generally, the receipts are unusually heavy during the months of November, December and January. The Budget Act, as originally written, contained no provision for any transfer of funds and hence it was necessary for any transfer, to make up any deficit in any class, to be made at the close of the fiscal year providing there was a surplus in some other class. But irrespective of the Budget Act and its terms, the original section governing your duty with respect to warrants being presented when no funds are available, should control the situation.

Section 12171, R. S. Mo., 1929, is 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."

Jan. 8, 1938

Therefore, in answer to your specific question: Can the treasurer pay a warrant and the next day protest warrant making a deposit in bank of warrant at par value, which with deposit would balance accounts? we are of the opinion that it is your duty as Treasurer, if there is no money in the treasury for that purpose, that same should not be paid but that you should certify on the back of the warrant that there is no money in the treasury for that purpose. In order to constitute a valid assignment, the terms of Section 12172, R. S. Mo. 1929, should be followed, as was stated in the case of Isenhour v. County, 190 Mo. 163.

Yours very truly

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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