

COUNTY BUDGET:

How to pay debts of past years and method
to determine validity thereof.

February 21, 1939



Honorable Marvin S. Carmichael
Associate Judge, Nodaway County Court
Maryville, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 11, 1939 asking our opinion on the following:

- "(1) What authority, if any, and how is the present county court to pay unpaid bills for the years 1937 and 1938?
- (a) Bills that were contracted after the years estimated revenue was exhausted?
 - (b) Bills that were allowed by the old court but no warrants written?
- (2) Would it be fitting and proper for the court to approve all such bills even though they are not paid at the present time?"

(1) These unpaid bills for the years 1937 and 1938 are to be paid out of the revenue provided for those years, or the surplus revenue of another year. This is the holding in Kansas City, Fort Scott and Memphis Ry. Co. v. Thornton 152 Mo. 570, 575 where it is said:

"* * * Under these provisions of the Constitution, (Sections 11 & 12 in Article 10) warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued, and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not

equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, 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.

This case furnishes authority and mode for the payment of these county debts.

The mechanics for making said payments out of subsequent surplus funds is discussed in State ex rel v. Johnson 162 Mo. 621. The court there had three questions before it. The first concerned the application of the surplus of one year to the deficit of another year. This does not concern us since the case heretofore cited adequately answers that question.

The second question was as follows, l.c. 628:

"If so, what is the lawful method of applying such payment? Must the warrants be paid in the order of their presentation and registration, or are they payable pro rata to all the outstanding indebtedness?"

The court in answer to this said l.c. 331:

"* * * We conclude that this surplus, after the current expenses for the years * * * * had all been paid, at once became subject to this general statute, section 3166, Revised Statutes 1889, (now section 12139, Revised Statutes 1929) 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

further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, (Section 12139 R. S. 1929) provides the rule of priority just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata."

The third question was as follows l.c. 628:

"If such surplus is so applicable and if payable in the order of their registration, is it the duty of the treasurer to so pay them or must the county court first distribute the fund for the payment of such warrants before the treasurer can pay any of such warrants for past years' indebtedness?"

The court in answer to this said l.c. 633:

"It was not at all necessary for the county court to make any further appropriation of the fund before the treasurer could pay relator's warrant out of this surplus. The court is required to distribute the current tax into the different funds each year, and may, in proper cases, transfer moneys from one fund, when not needed, to another that is insufficient, but after all the warrants for any year have been paid there is no provision of law for distributing this surplus into different funds, but it is in the hands of the treasurer, as an executive officer, charged by the statute with the duty of disbursing the funds on warrants drawn by the county court, and as the warrants have been drawn, all he has to do is to pay them in the order of their registration whenever he has money enough to take up a warrant * * * *"

(1-a) Any debt incurred after the years estimated revenue was exhausted, is void and the county cannot pay the same.

Article 10 Section 12 of the Missouri Constitution provides, "No county * * * of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year," except, of course, the indebtedness on bond issues assented to by a two-thirds majority to the voters.

In *Clarence Sp. School Dist. v. School Dist. No. 67*, 107 S. W. (2d) 5, 7 (Mo. Sup.) it is said:

"Under this section (section 12, art. 10) * * * (defendant) might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding * * * to the extent of the revenue provided for that year, but not in excess of it." (Our italics.) Failure to collect during any year all taxes levied therefor does not invalidate debts which were within the amount levied when contracted. * * *"

There is now a limitation of ninety per cent on the amount of anticipated revenue which may be spent. (Section 4, Laws 1933, page 343).

Applying the above it is evident that any debt contracted by a county which makes the counties whole indebtedness incurred in that year exceed ninety per cent of the anticipated revenue for said year, is void and illegal and not a binding obligation on the county and is not to be paid by the county. In ascertaining the validity of such a debt, it should be borne in mind that the indebtedness is incurred at the time the contract is entered into, and not when the warrant is issued therefor. *Trask vs. Livingston County* 210 Mo. 518; *Clarence School Dist. case*, supra.

(1-b) - (2) The items covered by these questions may be approved by the court and paid by a warrant drawn upon the revenue provided for the year the debt was incurred, even though there is no funds to pay said warrants on hand. Of course there is a limitation on this, in that, if any of said debts are void, under the

law heretofore set out they may not be paid.

These debts must be paid by warrant drawn on the funds provided for the year in which the debt was incurred, because in Kansas City, Fort Scott and Memphis Ry. Co. v. Thornton, supra, it is said that the constitution makes "each year's revenue * * * * * 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." Thus if there are any funds on hand, collected from delinquent taxes, for the year in which the debts were incurred they must be applied to these debts, and it necessarily follows that in order to do this the warrant must be drawn on that year's revenue.

Another way which the county may pay the valid debts of 1937 and 1938, if there is no likelihood of the same being retired out of surplus funds from other years is, after said debts have been reduced to judgment, vote bonds to pay said judgment indebtedness. (Article 7, Chapter 15 R. S. Mo. 1929).

CONCLUSION

Therefore, it is our opinion that unpaid county debts for years prior to 1939 may be paid out of surplus revenues of other years, if any (or by bond issue after reduction to judgment), if said debts are valid and binding obligations on the county. That any claim on the county for such a valid debt should be allowed by the court and a warrant drawn, in payment thereof, on the funds provided for the year in which said debt was incurred, even though there are no funds on hand for the payment of said warrants.

Respectfully submitted,

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APPROVED:

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