

COUNTY BUDGET ACT: Payment of claims out of class other than that to which they belong prohibited except same may be paid out of Class 6 under certain conditions.

August 21, 1939

8-22
FILED
17

Mr. Edgar S. Clatterbuck
Treasurer of Callaway County
Fulton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the following question:

"If the amount is spent that was set aside for class 3-three that is the Road class, and the Presiding Judge and Co. Clk. signs warrant is it lawful for the Treasurer to write chk. for same?

"Not for class three only but any other class, can the Amt. set up for one class be transferred to another? I want to know just how far the Treasurer has power to go in this matter to keep within his rights."

Your question involves the County Budget Act which is found in Laws of Missouri, 1933, at page 340 and as amended in Laws of Missouri, 1937, page 422, by the Act of 1937, Sections 2 and 5 of the original act were amended. Comparing the old act with the new it appears that class 5 of each of these sections was amended under the new act. Section 1 of the Act of 1933 provides in part as follows:

"* * * The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term

of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31. The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year. It is hereby made the duty of the clerks of the county courts of the several counties of this state to prepare all data, estimates and other information needed or required by the county court for the purpose of carrying out the provisions of this act but no failure on the part of the clerk of the county court shall in any way excuse the county court from the performance of any duty herein required to be performed by said court. 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."

The last sentence of the above paragraph indicates that the lawmakers had in mind and stressed the point that the expenditures of the county should be classified and that priority of payment according to the classification should be provided for and that such priority should be sacredly preserved by the county officials. By this statement in this section we think that the lawmakers meant by the term "priority of payment shall be sacredly preserved" that they intended that all of the claims of one class should be met and paid, or the court should be assured that funds were available for payment of such claims before they paid claims of the next class or classes below that class.

Mr. Edgar S. Clatterbuck

(3)

August 21, 1939

The Budget Act requires the court to classify the proposed expenditures of the county into six classes. Section 2 at page 422, Laws of Missouri, 1937. Class 6 of this section is as follows:

"Class 6: After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

You state in your letter that all of the funds in class 3 have been spent. Class 3 of the Budget Act is as follows:

"Class 3: The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

Under estimated expenditures required to be made by Section 5 of the Act, Laws of Missouri, 1937, page 423, it is provided in class 6 thereof as follows:

"Class 6: Amount available for all other expenses after all prior classes have been provided for. No expense may be incurred in this class until

all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest. Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

Class 6 of Section 2 for estimated expenditures clearly indicates that the funds in that class may be used to pay claims of prior classes where the funds of such classes have been exhausted. Class 5 of Section 5 of the Act of 1937, page 423, provides as follows:

"Class 5: Contingent and emergency expense.--The County court may transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses. Purposes, for which the Court proposes the funds in this class shall be used, shall be shown."

It would appear that this section would authorize any surplus funds in classes 1, 2, 3, and 4, to be transferred to class 5 to be used as contingent and emergency expenses. This transfer can occur only when there is a surplus of funds in either of those classes. When the

court places public funds in the classes required by the Budget Act such funds may then be taken from those classes only for obligations belonging to that class, unless there is a surplus therein, in which case such surplus may be transferred as is provided by class 5 of Section 5, supra. Otherwise, by said Section 1 of the act the priority of payment of such funds must be sacredly preserved.

The only way in which warrants now issued on demands against class 3 could be paid in case that fund is depleted would be out of class 6, and then only when all demands on classes 1 and 2 and all legal outstanding warrants of prior years have been met.

In your request you state that you want to know just how far a treasurer may go in performing his duties in connection with the payment of such warrants and keep within his rights. I think we have explained the provisions of the Budget Act clearly in regard to the transfer of funds from one class to another and the payment of claims out of class 6.

As to the obligations which an official incurs when he does not follow the provisions of the Budget Act, we refer you to Section 8 of the Act, Laws of Missouri, 1933, page 345, which provides in part as follows:

"* * * If any county treasurer shall pay or enter for protest any warrant before the budget estimate shall have been filed, as by this act provided, he shall be liable on his official bond for such act. * * * * *

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

Mr. Edgar S. Clatterbuck

(6)

August 21, 1939

In our research on this question we do not find where the courts of this state have had before them such a question. This is because of the fact that the Budget Act is new and not sufficient time has elapsed for such questions to get before the courts.

CONCLUSION.

From the foregoing it is the opinion of this department that if the moneys which were set aside for class 3 under the Budget Act have all been spent and there are other lawful claims payable out of this class, then such claims may be paid out of class 6 of the Act provided that there is enough appropriated for and in classes 1 and 2 to pay all lawful demands against those classes, and provided further that there is enough money in class 6 to pay all legal outstanding warrants against said class 6.

We are further of the opinion that if the treasurer or any other officer participates in the issuance of the payment of any warrant in violation of the provisions of the Budget Act, then he would be liable on his bond for such act.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA