

COUNTY BUDGET ACT: Current revenue coming in during the current year can be used during that year.

October 17, 1939

10-18

Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

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Dear Mr. Marr:

This is in reply to your letter of some time ago requesting an opinion of this Department, your letter being as follows:

"The following are items of independent revenue collected during the year by the county clerk. These items consist of revenue from the sale of products from the county poor farm; \$97.00 collected from Cooper County for refund in keeping a prisoner for them in the Cole County jail; fees from the office of the prosecuting attorney for convictions in criminal cases; Liquor and Beer licenses; Fees earned by the county clerk; sale and collections from sewing room products.

"Because these items of income are unknown quantity when the budget is made, there is some doubt whether this current income was figured in the 1939 budget in January.

"There is a contention that current revenue is unestimated and unapportioned in the 1939 budget, and is revenue to be left on hand for use in the budget of 1940, although duly collected in 1939.

"Now the fees collected by the prosecuting attorney under the constitution and statutes goes to the common school fund, of which there can be no question.

"But the other revenue is general revenue. The county court has to meet a \$1300.00 payment on a tractor; the county agent must be paid the monthly allowance; the county clerk and the prosecuting attorney are entitled to additional salary voted by the legislature; none of the above items being figured in 1939 budget."

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The main purpose of the County Budget Act was to place the respective counties on a budget which would confine each county to its anticipated revenue for any given year, thereby preventing the county from going into debt beyond its resources.

The Budget Act, Laws of Missouri, 1933, pages 341 et seq., did not completely abolish the former system originally under Sections 9874, 9985 and 9986, R. S. Mo. 1929, but emphasized the cash system by creating priorities among the classes.

By Section 12, of Article X of the Constitution of Missouri, the revenue of a current year cannot be used to pay accounts of previous years unless there be a surplus, but under the provisions of said section counties are entitled to expend all of their anticipated revenue for the current year for current expenses. The excess or funds arising from delinquent taxes may be used to pay prior years' indebtedness. This rule is well stated in State ex rel. v. Johnson, 162 Mo., 1. c. 629.

Applying the above statements to the questions which you present, we think that the items of \$97.00 collected from Cooper County for the refund in keeping of

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prisoners, liquor and beer fees, fees earned by the county clerk, sales and collections from sewing room products, can be placed in the general revenue fund or may be placed to the credit of any class which is in need of the same in order to preserve priorities.

We are in accord with your statement that fees collected by the prosecuting attorney in the matter of fines and forfeitures should go to the credit of the school fund.

We do not think there is any provision in the County Budget Act which prevents the court from using miscellaneous revenue for any legitimate purpose provided that the five classes of the Budget Act have received all of the revenue to which each class is entitled, and, in the event there are no prior liens on the miscellaneous fund, it can be used for the additional pay of the County Clerk and the Prosecuting Attorney.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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