

COUNTY COURTS:
COUNTY BUDGET:

County courts where they have transferred funds from the road fund to the general fund may not replace such moneys until all claims, including the fifth class claims, have been paid.

January 26, 1939



Mr. Eldon W. Palmer
County Clerk
Butler County
Poplar Bluff, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which is as follows:

"Since our Prosecuting Attorney is absent from the County we would like to have your opinion on the following matter:

"The previous County Court paid salaries and various other bills out of the County Road Fund, which should have been paid out of General Revenue, in the amount of approximately \$1800.00. Our present Court wants to know if they can legally transfer this amount of money back into the County Road account. We have no money in our revenue, and our December collections will not be sufficient to pay our outstanding warrants. Can a transfer of this nature have priority over warrants issued in 1938, for 1938 bills?

In the first place we will say that the county court had no authority to pay claims of the general revenue fund out of the road fund. On this particular point we are enclosing a copy of an opinion dated August 17, 1937, to

L. B. Shuck, Prosecuting Attorney of Shannon County, written by Mr. Olliver W. Nolen, Assistant Attorney General, of this office. This opinion holds that such funds may be recovered from the general fund.

You state in your letter the county treasury is depleted and that your December collections will be insufficient to pay outstanding warrants. We note from the records that Butler County contains a population of less than fifty thousand (50,000) inhabitants so the first eight sections of the County Budget Law applies to that county. Section 1 of the Budget Act, Laws of Missouri, 1933, page 340, provides as follows:

"This act may be cited and quoted as the county budget law. All counties now or hereafter having a population of 50,000 inhabitants or less, according to the last federal decennial census, shall be governed by Sections 1 to 8 inclusive, of this act. Whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless of the source from which derived. 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 cur-

rent 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."

This law was enacted for the purpose of compelling the counties to carry their business on a cash basis, that is, so that the counties would not be permitted to obligate themselves in any one year in an amount in excess of the estimated revenue for that year. The same idea is carried in Section 12 of Article X of the Constitution of Missouri, which provides in part as follows:

"No county, city, town, township, school district or other political corporation or subdivision 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, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose;
* * * * *

In the case of *Holloway to use v. Howell County*, 240 Mo., 601, l.c. 613, the court, in discussing the authority

of the county to become indebted, used this language:

"The theory of our present system of county government is that counties must run their business affairs on the 'cash system.' (Decker v. Diemer, supra, l.c. 330.) Running in debt is easy and pleasant while it lasts. Paying is 'another story.' The pleasure of debt making is denied by law to Missouri counties; they can anticipate their revenue, but only for the current year. * * * * *

Apparently the previous county court paid salaries to the county officers out of the road fund after it had issued the limit of warrants against the general fund from which such salaries were supposed to be paid.

As stated by the court in Holloway to use v. Howell County, supra:

"* * * Running in debt is easy and pleasant while it lasts. Paying is 'another story.' The pleasure of debt making is denied by law to Missouri counties; they can anticipate their revenue, but only for the current year. * * * * *

So in the case which you have submitted, the county court was authorized to anticipate the revenue available for salaries for the year 1938 and issue warrants therefor, which would be payable only out of the said 1938 revenue when it came into the treasury.

The only reason we can see for the court to have paid official salaries out of the road fund is because the court had issued to the limit warrants on the general fund based on the 1938 receipts and was attempting to increase the amount of money it could expend for salaries by paying

them out of the road fund. As stated above this was illegal and could not be done.

This rule of law is based on Section 4091, R. S. Missouri, 1929, which provides as follows:

"If any member of any town or city council, or of any county court or commission or body charged with the administration or management of the affairs of any county, or any executive officer or member of any executive department of any city, town or county in this state, or any member of any board or commission charged with the administration or management of any charity or fund of a public nature, by whatever name the same may be called, shall knowingly and without authority of law vote for the appropriation, disposition or disbursement of any money or property belonging to any such city, town, county, charity or fund, or any subdivision of any such city, town or county, to any use or purpose other than the specific use or purpose for which the same was devised, appropriated and collected, or authorized to be collected by law, or shall knowingly aid, advise or promote the appropriation, disbursement or disposition of any such money or property, for any purpose not directed and warranted by law, and such illegal appropriation, disbursement or disposition be in fact effected, every person so offending against the provisions of this section shall be deemed and taken to have feloniously embezzled and converted to his own use such money or property; but if the same be not effected, then such person so voting, advising or promoting the said illegal

appropriation, disbursement or disposition of said money or property, as aforesaid, shall be deemed and taken to have feloniously attempted to embezzle and convert the same to his own use, and, upon conviction of either or any such offense, shall be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months, or by a fine not exceeding fourfold the value of such money or property: Provided, however, that in any case when any money has been or shall have been collected by any city, town or county for any specific use or purpose, and it is or shall have become impossible to use such money for that specific purpose, either by reason of the abandonment or failure of such use or purpose, or the satisfaction of such use or purpose, then the members of any such town or city council, and the proper officers of such city, town, county or board hereinbefore mentioned, may appropriate such money to any other legitimate use or purpose without becoming liable to any of the aforesaid penalties."

From this section the county courts are not authorized to appropriate from the road funds salaries which should be paid out of the county revenue.

County courts must look to the statutes for their authority. There are so many cases holding this and it is so generally known that we do not deem it necessary to cite authorities. The courts can only pay claims and only from the funds authorized by the statutes. Section 2 of the County Budget Act provides that the salaries of county officers be paid out of county revenue and from the fourth class. Class 4 of this section is as follows:

"Class 4: The county court shall next

set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

From the question that you have submitted it seems that the previous county court was about in the same position that the County of Knox was in the case of Knox County v. Hunolt, 110 Mo. 67, l.c. 71, namely:

"* * * The county had no money in its treasury, and county warrants were depreciated. The county was indebted to the insane asylum for care of the insane poor, and to pay this and some other county debts the judges caused warrants to be issued upon and paid out of the county school fund. * * * "

In your case salaries were paid out of the road fund, but this makes no difference if the funds are misappropriated.

At. l.c. 73 in the Knox County case the court said:

"We come then to these questions, whether there has been a breach of duty on the part of the defendants; and, if there has, then whether that breach of duty furnishes the county a cause of action for the use of the county school fund.

"As to the first question there can

be no doubt. The eighth section of article 11 of the constitution points out from what source the county school fund shall be derived, and provides that the same 'shall belong to and be securely invested and sacredly preserved in the several counties, as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this state.' And to the same effect is section 7103, Revised Statutes, 1879, and amended in 1881. It is made the duty of the county courts to loan this fund only on unincumbered real estate with personal security in addition thereto; and the income can be used only for the payment of teachers' wages. Sec. 7073. The use of these funds for other county purposes was an act in direct violation of the constitution and laws of this state. The fact that the defendants treated the use of these funds as a loan to the county does not help the matter, for there is no warrant in the law for any such transaction. That the defendants, in using this money as they did, violated the plain letter of the law must be conceded. * * * * *

Again at l.c. 75, the court, in the Knox County case, said:

"* * * * * The use of the fund for the payment of ordinary county debts was an act in direct violation of the constitution and laws creating that fund, and was, therefore, nothing short of malfeasance. That the judges would be liable in a private suit to persons especially injured for such a violation of law is clear, and we can see no reason why they are not liable to the county.

"The county, it is true, received the

benefit of the money thus diverted since it was applied in the payment of ordinary county debts. But the counties in this state are quasi-corporations only, with limited corporate powers. The county owned this county school fund, but it owned and held the same for a specific purpose. As to this fund the county is rather a trustee of a trust declared by law than the unqualified owner. The county court and the judges thereof were the agents of the county, but they were agents appointed by and under the general laws. Their authority is limited and defined by law. As the defendants have misapplied this fund, and that, too, without any authority of law whatever, they must be held accountable to the county as trustee of the fund for such unlawful act. As they had no discretion by which they could apply the fund to the payment of ordinary county debts, it can make no difference that the act was not corrupt or a wilful violation of the law, and so the trial court ruled. This fund should be replaced by those who diverted it.

"As the county received the benefit of the money thus misapplied, it is but simple justice that it should return to the defendants from its general revenues such sums as they may be obliged to pay in restoring this county school fund, But the defendants cannot complain that warrants given them are depreciated."

Following the rule laid down in the Knox County case, supra, the county judges are personally liable if they misappropriate the funds, yet the court holds in that case that

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from the fund which receives the benefit of such misappropriation, the county should return to the judges the amount they had to replace, but it holds that the judges who committed the wrong in being paid for the amount they have replaced must take warrants on the funds so benefited even though such warrants are depreciated.

So in your case the class four county revenue fund which received the benefit of wrongful payment of the road funds may be charged with the duty of repaying such moneys, yet if the amount so paid by the road fund was in excess of the anticipated receipts of Class four claims of the general revenue fund for 1938, then it is illegal and could not be paid out of the fund for that year. The officer who made the misappropriation, under the Knox County case, supra, would then be liable for the entire amount misappropriated.

CONCLUSION

It is, therefore, the opinion of this department that the present county court is not authorized to pay out of Class four of the County Budget for 1938, the amount of money which has been paid out of the road fund for salaries in 1938 unless there is enough surplus in that class in the county revenue for 1938 to pay all warrants outstanding on December 31st of that year; that a transfer or repayment of such money to the road fund could not have priority over warrants legally issued in 1938 for 1938 bills.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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